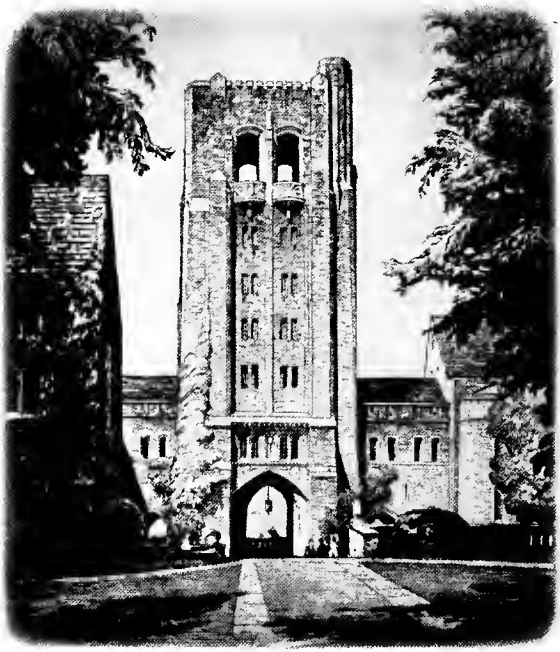

A CRITICAL STUDY

OF THE

EMERGENCY LEGISLATION

OF

WARRING NATIONS

Its Effect Upon the Sovereignty and Commerce of Neutral Nations, and Upon Private International Law

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LECTURES

BY

PROFESSOR ESTANISLAO S. ZEBALLOS

Delivered July 23-26, 1916, in the Law School of the University of Buenos Aires

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Translated from
the original stenographic report

Printed by The Penton Press Co.
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PROFESSOR ESTANISLAO S. ZEBALLOS,

DELIVERED JULY 23-26, 1916, IN THE LAW SCHOOL OF THE UNIVERSITY OF BUENOS AIRES. (1)

NEUTRALITY AND IMPARTIALITY

War imposes political duties upon non-participating nations. The body of such duties is designated as the system of "neutrality". According to the strictly public character of this institution, it is solely applicable to the relations between sovereign states. Violations of neutrality affect the private rights of individuals, whether belligerent or neutral, in many incidental ways. As a general rule, the enforcement of neutrality is entrusted to special tribunals of varied jurisdiction and character and with administrative, political and judicial functions combined, which are organized by the warring states for the period of hostilities. These matters constitute a distinct branch of private international law.

What should be the moral and legal attitude of the individuals of a neutral country toward those of a belligerent country? There are so many personal duties growing out of a state of political neutrality that they constitute a system of social life as a guarantee of public peace and civil liberty, a system which may be appropriately called that of "impartiality".

War is not made upon private persons, nor upon private property, nor do private persons war between themselves. An attack upon either may be a necessary military recourse of defense or of attack, but in any case such action is only exercised by the public authorities and by organized forces. The unarmed inhabitants of one country do not fight with the unarmed citizens of a hostile nation.

Mr. B. J. Loder, counsellor of the High Court of Justice of The Netherlands, published in the *Journal de Droit International,*

[1]Translation, and amplification of English citations, by Norton T. Horr, B. S., Cleveland, Ohio.

Paris, in 1914, an article entitled "The Influence of War Upon Private Contracts", in which he calls attention to the fact that among the prohibitions established by Article 23 of the Convention of The Hague Peace Conference of 1907, relative to the customs of land warfare, is found the following:

> "In addition to the prohibitions provided by special Conventions, it is especially forbidden . . . (h) to declare abolished, suspended or inadmissible in a court of law the rights and remedies of nationals of the hostile country." (Malloy, "Treaties", etc., 1910.)

This principle accordingly recognizes the validity of contracts and the authority of courts in harmony with the following words of the prominent English student of international law, Mr. Westlake:

> "It is necessary to conclude that a state of war must be limited to the two governments which are at war and to those of their respective subjects who, in each instance, are forced to participate in the objects of the war through military organization; but, that it does not exist between individuals as such."

These rules, applicable to the relations of the inhabitants of belligerent nations, acquire a very extensive and peculiar character in their application to the relations of the inhabitants of neutral countries with citizens of the belligerent nations. Each act of the inhabitants of a neutral country, which affects the tranquility, the well being, the social economy, the rights, or the interests of a citizen of any belligerent state, is an abuse of their moral and legal obligations and is a perversion of the state of impartiality which is imposed upon the individuals of neutral countries. Impartiality does not at all signify indifference, for that is an impossibility in view of the natural fellowship of the human spirit. The inhabitants of neutral countries entertain sympathies and antipathies towards the belligerent countries and their citizens, but the manifestation of such sentiment, in the exercise of the universal right of liberty of thought and speech, must recognize those limits which are universally imposed upon human actions by social decency, culture, tolerance, and the respect which is owed to the rights of others.

Any excess in such manifestations is an abuse and may degenerate into a wrong when it results in duress or unlawful restraint upon the mind, the rights, or the material interests of other residents of the neutral country. Such excess may even acquire a character of political transgression, when it results in a general atmosphere of hostility to particular social groups, and when such hostility might be interpreted by the country to whom those groups belong as evidence of hostility to it, particularly if the public authorities who are entrusted with the duty of preserving the public peace make no

effort to restrict such conduct. For example, the local French press interpreted the remarks recently made in this school by the illustrious ambassador of Brazil, although privately and not in any official capacity, concerning the European war, as an official expression of the sentiment of the government of Brazil in favor of the allied powers. The government of Brazil made haste to protest that the ambassador's remarks were strictly of a personal and private character and that the Brazilian nation is strictly conserving its neutrality.

The duties of impartiality, then, require that liberty of thought can only be followed by such liberty of expression as conforms to the susceptibility of all opinions, of all nationalities, and of all interests in those civilized countries, whose education and institutions guarantee the sanctity of private rights.

II

INFLUENCE OF THE WAR ON PRIVATE INTERNATIONAL LAW

All the teachers and the writers of international law discuss the influence of war. The Argentine school maintains that private international law is independent of public international law, notwithstanding the many bonds of relationship which exist between them, as between all branches of legal science, the object of which is the good of mankind. Consequently, it is not a part of my task to examine the problems presented by the abrogation of many of the principles of public international law, some of them centuries old, or to speculate upon their possible or probable efficient re-establishment in the future. Private international law considers and solves questions of private interest, divorcing them from the influence and interests of public policy so far as possible. It protects one man against another and against the state, domestic or foreign, during times of peace as well as of war.

Let us now consider what has been the fate of international private law in the present universal catastrophe. Has it and the protection of its principles disappeared? It has unquestionably suffered serious consequences in the universal disaster, but fortunately to only a limited extent. While we deplore the direct and indirect disregard of the rules of public international law, those of private international law subsist and are still applied, maintaining the integrity of its principles and of its results in most cases in an atmosphere heated, it is true, by the military bonfires, but clarified by that sentiment of justice which never ceases to influence humanity, even though it be distracted by the din of battle.

It is a great consolation to examine the testimonials to the high moral elevation preserved by the magistrates of belligerent nations

in their protection of the rights of the innocent; and this glorious achievement of private international law is a portent of hope for better days for public international law.

III

EMERGENCY LEGISLATION

Emergency legislation enacted by states at war interests humanity because it affects the most important achievements of mankind and principles of international law of both local and general application. It encroaches the domain of public international law as well as that of private rights, and, for that reason, its study falls well within the scope of our curriculum. Although more or less directly affected, the rules of private international law have not been abrogated. They have simply been made to suffer limitations imposed by circumstances, but which do not amount to the suppression of civic liberty or of its guaranties. Even in those cases where the administration of private law has been affected by the provisions of emergency legislation, litigants have enjoyed those double guarantees of individual freedom, a judge and an advocate, or their "day in court". True, the defense which the German now enjoys in England, and an Englishman in Germany, is not ideal as compared with that enjoyed under normal circumstances. Without in any way casting aspersions upon the German, French and British judges (I use the order of ceremonial diplomacy), parties to suits will look with distrust upon magistrates of a nationality hostile to their own; and, under certain circumstances, the judges themselves, by a very natural psychological process, will frequently be influenced by a certain involuntary patriotic partiality. Nevertheless, it is certain that the administration of justice in these unfortunate times exhibits in every belligerent country irreproachable independence and moral elevation.

We may conclude from the foregoing that the limitations imposed by emergency legislation upon private rights is moderate and exceptional; that, notwithstanding the rigid and often exaggerated precautions of a state of war, the field of its action remains open and protected by those sentiments of justice and pity which war has strengthened in the noble spirits of every civilized community. This security of our law appears to me complete, quite different from that which may result from the application of policy to the domain of international law, the recovery of which will be subordinated to the manner in which the war ends, and to the spirit of the treaties of peace which may and should be very comprehensive and broad and not mere stepping stones to new military catastrophies.

IV

DOMICILE AND NATIONALITY

When in 1892 I was honored with a call to this University as professor of international private law, I founded that which I called the Argentine School of Private International Law, the fundamental principles of which are expounded in my various publications, and to which I now refer, for lack of time to make any pertinent quotations of that material. At that time I asserted that the Argentine Constitution, which had its origin in the provisional statute of 1815, and as it was revised in 1853, together with the civil and commercial legislation based upon it, produced a system of law which was not only a novelty in jurisprudence, but which is also a guaranty of the future development of this country, whose population is so largely the product of immigration. At that time, as well as later, in studying the two chief principles which influence private rights, nationality and domicile, I initiated my propaganda in favor of the latter system as the best means of assuring future development. This system of nationality in its final form was first adopted as a means to political ends; namely, in order to make the unity of Italy possible and to permit the reconstruction of its nationality which had been so shattered by feudalism and domestic dissension. The system of domicile had been inherited by us from the Romans. They had adopted it when they founded their world empire, which is so comparable to the modern empire of the British, and which covered the entire world known to the ancients. As they came in contact with the systems of law of conquered, subject, purchased, or allied peoples, the Romans, in later days so faithfully imitated by English and American statesmen, created that wonderful system of conquest which Cicero characterizes in one of his letters to Attikus, when he says:

> "We make the Greeks and conquered Orientals believe that they are free, because we permit them to regulate their private affairs according to their own systems of law, and in that way they forget that they are our slaves."

This political system of permitting all the existing forms of law to continue side by side within the territory of the empire, forms the foundation of the system of private law based upon that of the domicile; the individual is competent or incompetent, major or minor, married or single, divorced or not divorced, his marriage is valid or invalid, his offspring is legitimate or bastard, all according to the law of the land which the person in question has chosen of his own free will as his domicile.

The system of domicile is, therefore, the highest guaranty of

the freedom of the individual who can select for himself the locality in which he prefers to establish a family, to acquire property, and permanently to reside, because he finds there the greatest degree of freedom, the greatest opportunity for labor, the greatest tolerance, the greatest legal protection, the climate which pleases him the best, adequate nourishment, social institutions to his liking—in short, all those moral and physical conditions which are necessary to his well-being and to enable him to contribute, on his part, to the progress and prosperity of the community which he has voluntarily joined.

Out of this system of the domicile follows the right of voluntarily relinquishing one's former nationality; that is, the right freely to emigrate and immigrate, to give up the fatherland of one's birth and to become a member of a new one.

Nationality as a political bond ties the individual to his fatherland. "Once a subject, always a subject," was a maxim of the feudal and British law. If we were to apply that legal doctrine, which has been somewhat weakened by the majority of European nations in their definitions of the law of the person, the Italians, for example, who settled in the Argentine Republic in the days of Rosas, those heroic soldiers who came to us with Garibaldi (1853), and others, of whom some died in our midst as generals and admirals, although they had severed the actual bonds which tied them to their European fatherlands, although they had acquired property here, purchased burial places and committed the remains of their dear ones to our earth, would have been obliged, in spite of all that, to marry, devise their property, and inherit according to the civil law of Italy, the law of a country under whose jurisdiction they no longer lived, with which they were no longer acquainted, and to which they were only bound by a moral sentiment of friendliness.

Our intelligence rejects such legal consequences, for they run counter to the human conception of freedom. There are in the Argentine Republic two and one-half million strangers, of whom, without doubt, eight hundred thousand have lost their original European citizenship by operation of our laws. It is a principle established by European legislation that he who abandons his native land without intention of returning, "sine animo revertendi", manifests a desire to break his national ties with his native country and to create for himself a legal and social standing in some other country, and if the country of his choice is advised of his intention and admits him to its citizenship, as the United States has done, then the immigrant in the exercise of his civil liberty has become an integral part of a new fatherland based upon his domicile, which, according to the doctrine of the wise Savigny, is nothing else than the right to freely choose the sovereignty, the law and the country under whose government he desires to live.

The doctrine of domicile governed the world until the end of the nineteenth century. The countries which adopted that doctrine, among the chief of whom were the British Empire, the United States, Germany and the Argentine Republic, held in their hands the dominion of navigation, the major portion of the tonnage which transported merchandise from one continent to another; they controlled the clothing of the world as producers of the major portion of its cotton and wool; they controlled the major portion of the cereals upon which humanity subsists, and the major portion of the fuel which prepares our food, warms us, and furnishes the motive power for our industries; in a word, they dominated three-fourths of the economical factors of civilization.

Germany, in whose separate states before the imperial consolidation distinct systems of law existed, chiefly the traditional German law, the Roman law, and the Code Napoleon introduced at the time of his conquest, after long and difficult labor succeeded in the creation of its civil code and thereby abandoned the doctrine of domicile which had been introduced into its system by the Roman law and by that of the Kingdom of Prussia, adopting the doctrine of nationality which was incorporated in the Code Napoleon in 1804, and perfected in the Italian code of 1865. It would be foolhardy to attempt a critical analysis of the work of the civil code of Germany in a South American University by professors who are themselves no more than students, a code formulated by the learned men of that country after a quarter of a century of discussion and experiment. Nevertheless, fulfilling my duty, and as an admirer of the Argentine constitution and its doctrines as well as a satisfied champion of the correctness of our own theory of the private rights of man, I permit myself to point out the error which in my judgment Germany committed when it gave up its old legal doctrine of domicile, which had been the best guaranty for the development of its international progress and of its "Weltpolitik", and substituted for it that of nationality, which is only a means of carrying upon its list of soldiers individuals who will not serve Germany as soldiers because they have been born in other portions of the world. The present war confirms the justice of my criticism and the correctness of the Argentinian theory. German commerce is today severed from all its foreign relations and is persecuted in the entire world on the theory of the legal doctrine of nationality which is now applied against it to define and fix the ownership and character of property and transactions as either neutral or hostile.

If Germany had retained the doctrine of the domicile, the emigrated Germans would have been protected by the laws of neutral countries, by their own laws and by the English doctrine of domicile, and they would have been able to defend themselves against the

persecution directed against them on account of their nationality, by an appeal to the rights of their domicile, which, as I will demonstrate, is recognized by the British courts, even in those cases where they are brought into question by the application of British emergency legislation.

I have dwelt upon this important question of domicile and nationality so long, because out of the distinction between these two doctrines follow many serious impairments of equal rights which we will have to consider when we take up the various legal questions which have arisen as consequences of the war.

We will then observe a remarkable development in the practice of the law of the British Empire, whose civilization is based upon the principle of the domicile and which has always been the most pertinacious supporter of this principle, both within and without its territorial jurisdiction. Now, forced by the annoying exigencies imposed upon it by war, new points of view have developed in the British Empire, which may be divided into two leading tendencies. In public law, it abandons the system of domicile and adopts that of nationality, at least in its prize tribunals; in the field of private law, the superior English judges commenced, fortunately, by sustaining and ended by adjudging, that it is not the nationality of the individual, but his domicile which determines his legal status and that of his property. The English seized the steamer PRESIDENT MITRE, because a part of the shares of stock in the Company which owned it belonged to Germans, ignoring the principle of domicile represented by its Argentine flag; in private cases, however, the English judges hold that Germans domiciled in London enjoy the protection of the British law.

For further considerations, directing myself particularly to the students of the law school who have the greatest interest and duty to pursue these subjects further, I refer to my published work in which I have treated questions of domicile and of nationality with relation to the German civil code and to the codification of private international law by the Hague Convention.

V

SEQUESTRATION OF PROPERTY OF CITIZENS OF HOSTILE COUNTRIES

Having established these general principles of law, I may now proceed to apply them to a discussion of one of the first cases in which war emergency legislation came in conflict with private individual rights. The nations of Europe by tacit consent have fixed the fourth of August, 1914, as the day of origin of the new political and legal relations arising from the war. Judicial proceedings may

be separated into two groups according as they were instituted before or after that date. This division is important for the legal consequences which ensue therefrom. The first measure adopted by the warring powers in respect to private rights, was the sequestration of the property of citizens of the hostile countries. Please observe carefully that in the legal language of the theorist there can be no such thing as German enemies of the English nor as English enemies of the Germans, because we have established that war is not pursued between individuals, but solely between states. We can only speak of the individuals as citizens of belligerent countries.

Sequestration of property is accomplished by authority of executive decrees, or by laws. Let us examine, with the brevity required by the limited time at our disposal, the varying points of view of the laws of the different countries in that respect. I will not refer to all of the numerous belligerents, but will cite the most important only, because the others have followed their example.

The emergency laws of Germany, France, Great Britain and Italy fill volumes which contain general, local and international, economical and political laws, and those governing private rights which are to be applicable during the continuance of the war; they are laws of exception, which in some respects conserve existing principles, but which in the most part establish transitory rules which will be abandoned when peace is again established.

VI

SEQUESTRATION IN GERMANY

The emergency laws of Germany fill three volumes which have been translated and annotated in a luminous manner by the secretary of the Argentine legation in Berlin, Mr. Eduardo Labougle, and transmitted by him, with a full report, to our government. Our government has considered it prudent to withhold this report from the public, as it seems to me, needlessly, because, as we will see later, these foreign laws have been translated and published either wholly or partially, both in France and in England. The publication of the Spanish translation, the first with which I am acquainted, would be very opportune and would be a stimulant to the few members of the diplomatic corps who are seriously working in the interest of their country.

On September 4, 1914, the federal council of Germany, authorized by the law of parliament to enact from time to time such measures as were demanded by military and political necessity, enacted the first European law of sequestration, one which affected all enterprises established in German territory, either by main home offices or by branches, which were administered or financed from a

hostile country, or of which the profits, either wholly or in part, would be transferred to a hostile country; it included banks, insurance companies and industrial corporations established in Germany and having their central directorate either in London or in Paris, by which they are controlled or to which go their earnings.

What is the character of this sequestration? Did Germany appropriate the commercial property of its enemies? No, German law is praiseworthy in the clarity and the precision of its terminology, which is adequate to obviate any future disputes. Sequestration is a measure of vigilance and of military and political precaution. It has for its object the prevention of any prejudice to military security or to the economical interests of Germany, which might arise from the conduct of enterprises directed or owned by foreigners. This vigilance is exercised by high functionaries of the government designated by the government and known as receivers, "Verwalter", who are limited to the direction in a general way, without going into details, of the business of such establishments, and who are empowered to adopt such measures as will save the sequestered enterprises from paralysis, or failure to accomplish the objects of their existence.

We do not owe this provision to any sentiments of gallantry or of humanity, but to a common sense policy in favor of German capitalists, because every foreign undertaking established in the country is in such a degree linked to its business system that its disaster would be a national disaster. Suppose for a moment that Great Britain should attack the Argentine "Bank of London and Rio" with violence. The damage which its thousands of depositors of varying sums would suffer would be very great, and these depositors are part of our own business system; they are ourselves. For that reason the Germans, with wise foresight, have protected foreign enterprises instead of showing hostility to them, and in so doing they have protected all their own closely connected interests. This law provides that in case of liquidation of a foreign enterprise, its assets shall be converted into money, which must be applied first to the payment of German creditors, and of which the balance must be deposited in the Imperial Bank to be claimed by those to whom it belongs after the end of the war. When the war ends, foreign owners of the net proceeds will appear and demand payment. The German attachment of the property does not indicate its acquisition, but only the superintendence of its management so that the orderly course of business and an adequate liquidation of assets may be secured. In case the managers or superintendents of such enterprises do not perform their duty, or make mistakes, they are replaced by receivers appointed by the government on motion of the authorities. The receivers have no right to change the personnel of the

staff of the business or to hire or discharge important employees. So far as possible, everything is conducted exactly as before the war.

The second chapter of the German law of sequestration deals with goods of foreign origin which were actually in the German custom house or in open market in German territory at the beginning of the war. Such goods are sequestered and sold and their proceeds applied to satisfy the demands of German creditors.

The remainder is deposited in the Imperial Bank for safekeeping and subject to claim by those entitled to it at the end of the war. The provisions of the German law in this respect are published in the *Journal de Droit International,* 1915, page 954.

VII

SEQUESTRATION IN FRANCE

In France during the first months of the war there was no fixed regulation concerning sequestration. The question came up and was approached from time to time through a series of administrative and judicial experiments inspired by the circumstances. The Minister of Justice, the civil tribunals and the department of public welfare were disputing among themselves concerning the sequestration of goods of citizens of hostile countries and the steps necessary to preserve the interests of the government, and were acting independently in that respect, which led to numerous administrative and legal difficulties and created much friction. For that reason the system of sequestration in France does not possess as well defined legal characteristics as in Germany. It began with an individual case; namely, the sequestration in the custom house at Havre of merchandise which belonged to a German firm, and which was ordered by the civil court at Havre on August 22, 1914.

On October 11, 1914, the Minister of Justice issued circular instructions to the Attorney-Generals of the provinces, in which it ordered them to report concerning all goods in their jurisdiction subject to sequestration. On the 13th of October the Minister of the Interior at the request of the Department of Justice issued a further circular to the prefects of the departments, in which they were ordered to afford all possible assistance to the officers of justice in the diligent sequestration of movable and immovable property of German and Austro-Hungarian citizens. A circular also solicited information from all local chambers of Commerce, syndicates and other business organizations concerning articles of property which should be sequestered. The latest circular, issued November 3rd, 1914, treats of the duties and rights of receivers of the property of German and Austro-Hungarian houses. The receivers are left free to carry on business affairs with the property during the war, in

such manner as best to preserve the interests of the owners. Because in France the civil courts have no attendant officers representing the public interests, the circular directed the presiding judge of each civil court to initiate the sequestration of the assets of foreign business houses. The circular says:

> "This measure is purely of a conservatory character and the receivers are empowered to take all necessary steps to collect all accounts receivable and use the proceeds to pay the accounts payable. Legally you cannot go any further; but as a rule, business houses under sequestration must cease their former activities. This continuation of the conduct of their business is compatible with sequestration, and since complete and immediate closing of their business would be of injury to French interests, proper regard for those interests will permit the continuation of the business in a provisional and limited way for the purposes indicated. German and Austro-Hungarian factories, the products of which are used to meet the requirements of our army, must be kept in operation in order to satisfy this public necessity; and businesses of that kind will be continued pursuant to an understanding reached with the military or naval authorities on direct application or by requisition. It is also possible that it will be advisable, in some cases, to operate in the interests of French employees and creditors."

The aim of the French regulations is, therefore, the liquidation of the sequestered businesses, whereas the German law contemplates their maintenance.

On the fourth of November, finally, the Minister of Justice issued special instructions concerning the legal obligations of the receivers. This is the most important edict on this subject which was issued from Bordeau:

> "The presidents and other members of the court must watch over every step taken by the receivers in sequestration cases. They must not only see to it that these receivers perform their duties in a regular and faithful manner, but they must also watch to see that they conduct their work as industriously as possible. Furthermore, they must take care that the business affairs of the receivers are conducted as prudently as possible, that all unnecessary expenses and all unnecessary formalities are avoided, the costs of which will constitute a needless expenditure. To this end the

receivers are required to personally perform those duties which in other cases would be performed by their subordinates, by public officers or other private employees, and unless necessary, assistance is not permitted, in order to keep down the expense. Every offense against this provision must be inquired into and in case of necessity severely punished. The president is given the privilege of employing a deputy for the receipt and examination of the periodical reports which must be made to him by receivers, and the judge named for each case for that purpose must countersign the reports.

"The foregoing directions are limited to the determination along general lines of the methods to be observed in handling sequestration cases."

A further circular was issued on the 14th of November, 1914, by the Minister of Justice to the same authorities and provided that the receiver of sequestered property had nothing to do with it except to preserve it, and could not deal with it any further than was necessary to collect the accounts receivable and to pay the accounts payable. This circular reads in part:

"Moreover, it should not be forgotten that the appointment of receivers for the property of German, Austrian or Austro-Hungarian subjects is not intended nor has it been so exercised as to rob these people of their property. You are not dealing with an act of confiscation, and very far from depriving the owner of his property, either directly or indirectly, the sequestration proceeding, according to the view of the government, must be limited to the safe custody of the property, as I have repeatedly declared. The regulations from their very nature will tend to hinder German and Austro-Hungarian business houses engaged in industry, trade or agriculture in France from permitting hostile nations to draw any advantage from their operations during the war or out of the industrial activity of France. Under no excuse shall the sequestration serve any other purpose. The directions given are limited, therefore, to the disposition of the assets of German or Austro-Hungarian business houses, through the ordinary course of trade. It is superfluous to remark that the same end may indirectly be reached through the exercise of the right of requisition which cannot be defeated because of pending sequestration proceedings. In such

a case the law regulating military requisitions shall be applied without prejudice to the payment of indemnity equal to the value of the advancements accomplished by such requisitions."

Such is the circular which defines with the best precision the character of the remedy. Another circular of December 5, 1914, establishes the essential principles which ought to be observed in the organization and exercise of the management which the presidents of the civil tribunals are required to exercise, with the assistance of the public prosecutors, of all property sequestered from Germans, Austrians and Hungarians. A further ministerial decree fixes the manner of remunerating the receivers.

You will observe that the ministerial circulars omit any reference to fundamental questions of the right of the former owner to have the proceeds of the sequestration returned to him after the end of the war. Even in view of the fact that these regulations are only of a provisional character, still their text entrusts the liquidation of the property in question to agencies of the state. There arise, therefore, many questions for discussion with which the French newspapers have busied themselves, such as the following: What will be decided in France about the final right of property in such cases? At the end of the war, will the net proceeds be recognized as the property of the former owner? Will the liquidation be carried out in the form provided for by the German law? Have the proprietors of sequestered property the right to the income of their property while prisoners of war, or interned in France, or while they live in neutral countries? These are questions which arise from the lack of clearness in the provisions of the French regulations on this subject, but they should all be answered in the affirmative.

Notwithstanding, I know of decisions in the negative. There was the case of sequestered real estate of Germans or Austro-Hungarians which was used by the French government for barracks for troops. The question was asked whether the customary indemnity was to be paid to the owners. On April 29, 1916, according to the report by the *Le Temps,* this question was put to the French government, and it is said to have given the following answer:

"This question must be answered in the negative. No indemnity of any kind will be paid for the occupation of the real estate in question. And in case the receivers of the property have already received from the government any indemnity for this property, it must be immediately repaid to the public treasury."

Another interesting lawsuit is that of a French woman who was married to a man without a country, a German by birth, but who had left his native land forty years before without ever returning, and who resides in France, where he owns property. He was interned because they considered him a German. His wife demanded that the government pay her a provision for her temporary support, and there was granted to her a temporary pension of three hundred francs per month. Her husband, Frederic Durr, protested that he was not a German because he had lost his German citizenship under the German law of 1870, which provides for that result, if a German citizen resides ten years in a foreign country without making a declaration that he intends to retain his citizenship. The man was "heimatlos", without a fatherland, and, according to the spirit of the French law, he came nearer to being a French citizen. In spite of the legal soundness of his argument, the French government refused him the thousand francs which he demanded for his support out of his own sequestered property, and declared simply that it considered him a German.—(*Le Temps*, October 14, 1914.)

VIII

SEQUESTRATION IN ENGLAND

The decrees about sequestration which England has issued differ in their fundamental character from the German laws, but are still very much more definite than the French measure. England takes away from the German or Austro-Hungarian the possession of his property and entrusts it to its own administrators, but it keeps the proceeds for final liquidation after the war.

IX

MARITIME PROPERTY

Among the important subjects covered by the emergency laws is that of property of ships and their cargoes. As I have mentioned, the English policy imposed by it upon its allies, has developed to the point of disavowing the ancient rule of the domicile in determining the ownership of vessels. Ships, like persons, have a domicile and their domicile establishes the law applicable to them even though their ownership be German or indeterminate, as is the case whenever ships are owned by stock companies; for certificates of stock have no nationality and they change hands daily in the stock exchanges in such a way that they may belong to an Englishman, to a German, to an Argentinian, or to a Russian all in the course of one day.

Ships, whatever may be the ownership of the shares of stock which represent their value, are domiciled according to the rules of admiralty law, and according to the regulations imposed upon them by the country of their registry and flag. The domicile of a ship is that of its origin or of its adoption by registry, just as a foreign person, who comes into our country and acquires a domicile characterized by permanent residence, the foundation of a family, the acquisition of property, the pursuit of affairs, and his final acceptance as a citizen. But England, since the war, has held that the nationality of a ship and of its cargo is that of its owner, and has given up the doctrine of domicile as fixed by the law of its flag, and which was recognized even during the present war until October 20, 1915. From that date, England has relinquished the legal principle of the domicile in marine law in order to better enforce the blockade of German ports. Still, it may be that this change of doctrine is only provisional, and I am satisfied that at the end of the war England will return to the doctrine of domicile, for then her trade will return to that free and unhindered competition in the exercise of which the theory of domicile offers advantage to all nations reached by the fleets of trade.

Even though maritime property in England is treated provisionally according to the principles of nationality, it remains in neutral lands now as formerly, subject to the principles of the law of domicile; and it was this last principle which controlled the decision in the case of the seizure of the PRESIDENT MITRE. That ship was given back to us because England did not dare to expose itself to the decision of an impartial court, for an impartial court would have returned us the ship and would have given us a large indemnity besides on the authority of England's own law, which has been followed persistently for centuries, that domicile controls not only the rights of the individual, but those of navigation.

X

CONTRACTS DURING THE WAR

This is another of the main topics of private international law which has been affected by emergency measures and which presents cases of interest to the tribunals of every country. All contracts entered into before August 4, 1914, and which by their terms were to be executed in an enemy country, enjoy a period of grace, or *moritorium,* fixed by the warring governments in order that legal obligations contracted in good faith before the outbreak of war could be performed without prejudice to the interests of either contracting party.

But what is the effect upon the legal rights of parties to contracts entered into *since* the 4th of August, 1914, and which were intended to be performed in foreign countries? The emergency laws of Germany, France and Great Britain (Italy occupies in respect to Germany a special position which I will discuss later), have uniformly held such contracts void. It is prohibited to the citizens of each country to contract with the citizens of the enemy country within the respective national territory, and contracts which violate this prohibition are void and constitute misdemeanors for which penalties are provided. This is a rule of military and legal precaution well within reason. The object of war is apparently to dominate the military forces of the enemy; but modern public policy and war alike are industrial; formerly, people went to battle in the flush of courage because people were romantic. Later they fought for territorial extension, for the vanity of the reigning houses; but now they fight to the death for the commerce of the world, for the domination of our industries, for the absorption of our capital. For that reason, one of the recognized methods of hostility is to prevent the Frenchman who has affairs in Germany from removing his profits to France and to thereby strengthen its powers of resistance, just as it is legitimate that France should prevent the German with affairs in France from a similar procedure favorable to his country.

However, this is not the only point of view which is presented. Not only contracts may not be consummated between nationals of belligerent countries, they may not be consummated between nationals of belligerent countries and inhabitants of neutral countries, if it is the intention to execute them in the former. That is a matter of great commercial importance which has been the object of special regulation, as we will see later.

XI

HAVE THE CITIZENS OF A HOSTILE COUNTRY ANY STANDING IN COURT?

The validity or nullity of contracts entered into since the 4th of August, 1914, is intimately linked with the consideration of this important question. Have the citizens of a belligerent country any standing in court in the enemy country? Has a German a right of access to the French and English tribunals for his personal protection?

(a) The Attitude of Germany

The German Supreme Court on October 26, 1914, rendered the following decision:

> "The German code does not recognize the provisions of certain foreign codes which are prejudicial to

> the citizens of foreign states. It recognizes the theory that war is only waged between hostile governments as such and between their respective armies, and that citizens of hostile states in the eye of the civil law occupy the same position as our own citizens in war time as in peace, and that this principle will be applied in all cases save those regulated by some contrary and express provision of the statute."

(Decrees of the Civil Branch of the Supreme Court, volume 85, page 734.)

This judgment acknowledges the right of a citizen of a hostile state to appear before a German court as a party during the war, whether he be plaintiff or defendant. This rule is applied without restriction to natural as well as artificial persons of hostile lands who are residents of Germany. If a subject of a hostile country is unable to appear personally in court, he has the right to be represented by counsel. If such a person is the owner of a business enterprise in Germany, the person conducting such business may appear in court in the name of his principal in spite of the supervision being exercised by the state over its affairs. In discussion of this judgment, the Swiss author, A. Curti, has published an interesting article in the *Journal de Droit International,* page 785, anno 1915, under the title "La condition des sujets ennemis selon la loi et la jurisprudence allemandes". He says:

> "It follows clearly that the subjects of a country which is at war with Germany may enforce their rights during the war in its courts. Moreover, with a view to the protection of that right of the foreigner, the highest Prussian court has held that the trial of an action may be postponed, if the party to it who is a citizen of a hostile country is not in a position to appear personally in defense of his rights."

In another judgment published in the *Deutsche Juristenzeitung,* on May 1, 1915 (page 526), the postponement of a proceeding was ordered on the ground that the plaintiff who was an English subject and a prisoner of war was interned in Ruheleben.

Article 247 of the German code of civil procedure provides as follows:

> "When one of the parties to an action is serving in the army during war or is in a place where he is unable to attend the sitting of the court, whether because of the orders of the authorities, or in consequence of any other unforeseen circumstance resulting from

the war, he may demand as of right a delay of the proceeding until the hindrance is removed."

Mr. Curti closes his article with the following language:

"It appears, therefore, that it is not open to question that French, English and Russians will be permitted to appear before the German courts as parties, either plaintiff or defendant, during the war; but that they cannot receive or collect any damages awarded to them by the judgment of the court, if such payment or receipt would be made in a foreign country."

In the month of November, 1915, a German Protestant pastor met in one of the streets of Berlin a university Professor who had married a French woman and who was walking with his wife and a governess of the same nationality, then in his employ. During the promenade the professor conversed with the governess in French. The Lutheran pastor considered it an insult to Germany for anyone to converse in French in the streets of Berlin during the period of this terrible war. Having reproached the professor for so doing, the latter insisted that he was entirely justified in conversing with his wife and his governess in French, that he insulted no one thereby, and was not in any way disturbing the public peace. The pastor, carried away by his patriotic sentiment, which was stronger than his tolerance, struck the professor. The police intervened. The case came before the criminal branch of the court, which discharged the pastor from the complaint made against him by the professor; but the court also discharged the professor, declaring that the speaking of French in the streets of Berlin without hostile intent was no misdemeanor, but the exercise of a right.

A little later a similar case came up in Strassburg. An Alsatian Miss, who was watching the passage of a column of French prisoners, approached them and threw toward them a note on which was written "Do you not know that the 'boches' have suffered a great defeat on the Marne?" The word *boches* angered the officer who was in charge of the column; the young lady was arrested and charged with espionage and with insulting the German army. The court of Dessau decided that the defendant was not guilty of espionage or of treason, although she was an Alsatian. But as to the construction of the word *boches,* the court held that it was not in a position to decide whether it was an insulting word or not; and, in order to avoid committing any injustice, it preferred to refer the question to the University of Strassburg for an opinion on the origin and significance of that word.

The University placed the inquiry in the hands of Dr. Zeligson, a professor of the Lyceum in Metz. He said the word was derived

from *caboche,* which means "thick-head", and expressed the opinion that it was commonly confused with the word *alboche.* He expressed the opinion that subjectively the word *boche* implied an insult, but that used objectively it was not insulting and that it all depended upon the circumstances under which it was used.

Professor Kiessmann, of Dessau, expressed the opinion that *boche* is derived from the word *caboche,* and that the common people in France were using this word during the war in an insulting sense.

Basing its judgment on these opinions, the court then decided that the young lady in question, Miss Barthel, had insulted the German troops, and it sentenced her to five months in prison, deducting from the sentence the two months of imprisonment which she had already served.

(b) In France

What is the legal status of contracts of citizens of hostile countries in French territory? Have they a right there to the protection of the courts?

The French criminal court of Pont-l'Eveque in the first instance, and the Court of Appeals at Caen in the second instance on appeal, decided in the year 1915 a damage suit brought by Julius Ruthemburg, German by birth, but a naturalized Frenchman, against the publishers of *Le Progres,* a newspaper of the city of Dines, which had called this gentleman a *boche.* After a very long and tedious trial, involving many irrelevant matters in which the attitude of the judge seems to have been somewhat disturbed by his war time prejudice, judgment was rendered that that word used concerning a German, even though he be naturalized, constitutes no insult; but he sentenced the newspaper publishers to a fine of sixteen francs because it had cast aspersions upon the method by which the plaintiff had acquired his property. This judgment seems to be tempered with patriotic mercy, but there was no appeal. It is one of the cases in which the court was improperly influenced by the existence of a state of war and to which I have already referred.

There were, however, much more important actions in France to which Germans were parties, and in which the high principles of justice and natural honor were conserved; for in my opinion a country which does not extend justice to the stranger, whether in peace or in war, is one of inferior civilization.

But in important cases the French courts have taken a higher attitude. In the Ruthemburg case it would seem as though the judge really meant to say "don't bother the court; your quarrel is not worth while."

Among the many, I will cite only one of the leading cases, one reported in the *Journal* of Clunet, page 669, anno 1915. Branch number 10 of the criminal court of the Department of the Seine

rendered a judgment on January 9, 1915, in a case brought by Gey, a German, against the *Compagnie Generale de Voitures*, of Paris, for damages resulting from an injury inflicted by one of the defendant's automobiles. The defendant insisted that the plaintiff, being a hostile German, could not prosecute such an action in a French court. The court held:

> "1. Article three of the decree of September 27, 1914, which forbids the consummation of any contracts entered into before the beginning of the war, August 4, 1914, in favor of subjects of Germany or Austro-Hungary applies to contracts of a civil or commercial character.
>
> "2. It has, however, no application when the consummation of such a transaction or contract does not conflict with the interests of our national defense.
>
> "3. The act in question does not interfere in any way with the authority given by a German to his attorney before the 4th of August to represent him as a party in a damage suit, which might result in a judgment for damages and costs against the defendant.
>
> "4. Such employment has the exclusive purpose of protecting the interests of the plaintiff and to make it possible to prosecute the action without the plaintiff's personal appearance before the court.
>
> "5. Moreover, to annul such an employment would be a direct attack upon the right of defense.
>
> For all these reasons the court will entertain the petition filed by Brunet in the name of and as attorney for the plaintiff, Gey, but will postpone any further proceedings until the close of the war. The case is continued until the day after the close of the war, and no order is now made as to costs."

The postponement was based upon the theory that the presence of Gey was necessary in order to substantiate his complaint. This judgment started a wide discussion among the lawyers and judges of France, who are not in accord in their opinions.

The court of the first instance in Bayonne actually decided that the receivers of sequestered property were not personal representatives of the German and Austro-Hungarian owners, but were simply custodians, and for that reason they had no right to appear in court in the name of the owners either to prosecute complaints or to defend against them.—(Civil court of Bayonne, December 4, 1914, as reported in the *Journal de Droit International,* 1915, page 653).

A judgment of the civil court of Marseilles held that a German has no right to employ an attorney in a civil suit in which he is the

defendant, and that the receiver of his sequestered property may not appear in the court as his representative, even though he has already been appointed by the court as a representative *ad litem.* —(Civil Court of Marseilles, January 22, 1915, as reported in the *Gazette des Tribunaux*, May 28, 1915.)

On the other hand, the civil court in Philippeville, on April 28, 1915, decided that execution may not issue against a German for a debt owed to a Frenchman, but that it might issue against the receiver of his sequestered property and that the latter may appear for and represent him in that connection.—(*Journal de Droit International,* July 29, 1915.)

The Superior Court of Algiers decided on June 22, 1915, that the prohibition of article two of the decree of September 27, 1914, must be construed to include judicial proceedings, and that a German had no right during the war to appear in that court. But at the same time this court held that the German could not be condemned in his absence, and that he might be represented by the receiver of his sequestered property, if the latter had been appointed by the court to serve *ad litem.*—(*Journal de Droit International,* 1915, page 516.)

Mr. Gaston Courtois, a Parisian lawyer, writes concerning these judgments as follows:

> "It is not easy to deduce a reliable rule or to reach a general conclusion from these contradictory decisions, but the questions involved and which have been decided in so many ways, are of importance and are presented frequently in our courts. It is, therefore, interesting to seek the solution which ought to be given. I am inclined to believe that the prohibition of appearance in court by defendants of a hostile nationality is general in France and is applicable both to the complaint and to the defense. This is the solution to which the combined provisions of the decree of September 27, 1914 leads.—(*Journal de Droit International,* 1915, pp. 510-512.)

As to the temporizing attitude of the court of Marseilles and of the Supreme Court of Algiers, the same author is of the opinion that their conclusion was a happy thought, but one not yet justified by the law; because, if it be once conceded that execution may issue against an absent German, it is necessary to extend to him all the other legal consequences of his absence. Nevertheless, it appears to me from the numerous French decisions and from the commentary quoted, that there is a tendency in France to give the German standing in its courts, a course which would be honorable for the French nation to pursue.

Attorney Courtois maintains that the French law of sequestration is obscure and that the functions of the receiver, in cases where he is entrusted with the custody of the property of subjects of hostile countries, are badly defined. He believes that its provisions must be more sharply construed and extended to permit a Frenchman to collect by judicial process a debt owed to him by a German. Still, Mr. Courtois is in favor of the postponement of execution until the debtor of hostile nationality has an opportunity to defend himself. Concerning this, he uses the following language, which somewhat moderates the apparently narrow point of view of his statements above quoted:

> "No better reason could be given for the correctness of the judgment of the tribunal of Philippeville than the necessity of protecting the interests of French creditors, for they should not be forced to await the end of hostilities in order to obtain a recognition of their rights and a final decree. But if we claim that the court is responsible for the correctness of its judgments, it follows that the court should have for its guidance in formulating its judgment all the information which it can procure. The foreign debtor, when he left France, probably took with him his books of account, his correspondence, and other documents which would enable him to prove, perhaps, that he owed nothing and that the complaint against him was unfounded. In such case, the receiver of his property would have no means of defense and could not successfully contest the claims of the alleged creditor, and the court might easily be led into an unjust decision. Any so resulting injustice based upon that cause would certainly be voluntary and intentional, and might result in exposing the receiver himself to suspicions of culpable collusion with the creditor. It is, therefore, of the greatest importance that the French courts be not exposed to the charge of abetting robbery, or of accomplishing reprisals under the guise of legal form. For this reason, it appears to us necessary that the court should ascertain whether the receiver would be in a position to intelligently defend the cause, before it appoints a receiver of sequestered property as its representative *ad litem;* yes, it even ought to ascertain whether the complain is intrinsically a just one, so that the receiver, as a defender of the suit, need only play a passive role."—(*Journal de Droit International,* 1915, page 520.)

The decisions and the theories concerning the right of foreigners to standing in court are, as we have seen, contradictory in France; but I am inclined to believe that the leading jurists entertain the doctrine of the criminal court of the Department of the Seine, according to which a subject of a hostile country must be protected in his private rights in the French tribunals. I base my belief in that respect upon a peculiar circumstance. The French lawyers have asked themselves, "can we, as representatives and protectors of the law; we, who are bound by an obligation to exemplify by our own conduct subservience to the law; can we permit ourselves to be influenced by those motives of patriotism which seem to forbid intercourse of any kind with the subjects of a hostile country? Is the strict observance of the letter of the law consistent with the fulfillment of our duty and with the oath which we took to defend justice in an honorable manner?"

The lawyers of France found themselves in a difficult psychological position. For that reason, they had a meeting and chose attorney Millerand, ex-minister of war, to decide what attitude they should take toward the denial of any right to have dealings with the enemy. Mr. Millerand composed a very remarkable report published in the *Journal de Droit International,* 1916, page 12, in which he maintains that the lawyers are obliged to follow this regulation enacted for the national defense, but that they must at the same time take care that no one in France is deprived of the right of being represented by counsel in the courts, leaving to them to reconcile in some manner the legal prescriptions with the duties implied by their oath of office as lawyers.

He advised the French lawyers that they could undertake the defense of subjects of hostile countries, if, before doing so, they had sought and received the permission and approval of the president of the French bar. It goes without saying that this official will always give such permission.

(c) In Great Britain

The most noteworthy British judgment which I can cite, one which discloses a high regard for humanity and in which the English judges demonstrate that they know how to divorce themselves from the exaggerations of political sentiment, is that handed down by Judge Younger in London in a case against a German and which was affirmed by the Court of Appeals November 26, 1915. *Schaffenius* vs. *Goldberg,* 140 Law Times Reports 88.[1]

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[1]Judge Younger's decision is reviewed and favorably commented upon at length by the editor of the Law Times who may be considered to voice the sentiment of the London bar in the following language: "The chief cause for satisfaction in a case of this kind is to be found in the reflection that, notwithstanding the natural prejudices which a state of war engenders, British justice continues and will always continue to be administered in British courts according to the high principles of British law." (Trans.)

Judge Younger's decision was rendered September 23, 1915, in a case in which the validity of a contract between a German and an English Company was involved.

Judge Younger based his decision upon the construction of the court that the defendant was not an enemy in a legal sense, because of his interment as a German. He says that internment does not deprive him in any way of capacity to make permissible contracts; that, because of his imprisonment, he cannot leave British territory, and must, therefore, *a fortiori* be considered as a resident of England and entitled to the protection of the king, even though he be treated as a prisoner of war. This learned and impartial judge bases his conclusion specifically upon earlier decisions of the British courts. He cites the case of *Mary, Duchess of Sutherland,* in which Judge Warrington decided that a stranger of hostile nationality may institute an action in England, even though he does not live in the country, provided, however, that he is not engaged in business with a hostile country; as would be the case, for instance, if he resided in an allied or neutral state and were to conduct trade transactions from the place of his residence through the mediation of citizens of such hostile countries. Judge Warrington says that if a stranger of hostile nationality who lives in a neutral country may bring an action in the English courts, it must follow that one who lives in England and who is interned there may do the same. He says:

> "In fact, we must always remember that it is the place where he is conducting his transactions, that is, his domicile, which is of controlling importance in the decision of this question and not the nationality of the plaintiff. In a case like this, in which the plaintiff is physically prevented from leaving England, we find no element of public or governmental interest which should militate against the full application of this principle."

Judger Younger examines other analogous cases, bith in Great Britain and in the United States, among others the case of *Charles* vs. *Morey,* in order to prove that strangers living in England under the sanction of the law enjoy the protection of the king. Judge Younger closes his decision with the following words:

> "*Prima facie* all persons living in England have a right to appear before the English court; but a foreigner, even though he be of hostile nationality, who is a resident of England, must always prove that he resides in the country either with the express or with the implied consent of the king, before he can be recognized in the English courts in times of war as a plaintiff. Even under these conditions, as is shown

by the decision of Judge Sargant in the case of *Pricess of Turn & Taxis* vs. *Moffitt,* L. R. 1 Ch. Div. (1915) page 58, the registration of the plaintiff as a subject of a hostile nation, resident in England under the Aliens Restriction Order of 1914 is sufficient proof of such permission. It is possible that the expression 'that he is under the protection of the king' signifies something more than the consequence which follows the permission to remain in England. If these words do signify anything more, it must be something expressly established by law; for instance, that a prisoner of war in England enjoys the protection of the king, as is held in the case of *Sparenburgh* vs. *Bannatyne* 1 Bos. & P. 163. * * * * I conclude, therefore, that the contract concluded between the plaintiff and the defendant is not in any way invalidated by the circumstance that the plaintiff is temporarily interned in England as a civil prisoner of war, and that the plaintiff is entitled to pursue his remedy in every manner."

The decree just cited justifies my earlier statement. It is a consolation for humanity that our science of law has protected all the legal principles which safeguard private rights in all the courts of belligerents from the danger of falling with the collapse of the principles of public international law.

Gentlemen, this strictly legal analysis of the subject matter of emergency laws will, I trust, leave in your minds a satisfying and comfortable feeling in view of the passionate and very often venial newspaper articles which stimulate international hatred and which also serve to conceal from the view of the world all the great and beautiful examples in the province of justice afforded by the conduct of all of the belligerent nations in forcing themselves to recognize and honor not only their own law, but that of the enemy.

(CONTINUATION OF LECTURE JULY 26, 1916)

I would like to remark that this, so far as I know, is the first time that emergency laws enacted by reason of the war and which either suspend or limit the common law, have been the subject of study or consideration in any University. I desire, for this reason, that my treatment of the subject may be both complete and logical, but in view of the enormous extent of material, I must limit myself severely in the consideration of that portion of the topic which has to do with patents, trade marks, and insurance.

XII

INDUSTRIAL PROPERTY

All of the countries engaged in the war have either passed protective laws or have granted a moritorium applicable to trademarks and patents whereby the payment of license fees or other periodical installments has been postponed. In some cases, especially in France, the postponement was only for sixty days, but could be successively renewed. In other countries the moritorium lasts until the end of the war. The judicial decisions have observed the spirit of the protection so sought to be afforded. The Superior court of Berlin rendered a decision in February, 1915, in a patent case against a resident of French nationality, and declared that Germany was at war with France and its armed power, but not with its citizens; and, for that reason, that the rights of foreign private citizens, theretofore recognized by law, can only be suspended by specific legislation to that effect. The court adds that the German law does not recognize any doctrine that war is directed against private property.

In France the law of May 27, 1915, contained provisions concerning industrial property with particular reference to patents, whether they belonged to German or Austro-Hungarian citizens. This law is only, however, of temporary application. It forbids such foreigners from deriving any enjoyment from their patents; and, in case of patents assigned to third persons, the law recognizes or permits recovery of royalties if it is shown that the transfer was made before the 4th of August by a German owner, or before the 13th of August by an Austro-Hungarian owner. The law permits inventions of citizens of hostile countries to be utilized, without compensation, for the national defense of France. It further provides that Frenchmen and citizens of allied states may comply with and fulfill in foreign countries, either directly or through power of attorney, all the formalities and obligations necessary to the protection of such industrial property, to the same extent that citizens of such hostile countries are permitted to do so in France. The law further provides that exceptions may be made from the operation of the law in the case of subjects of the German and Austro-Hungarian Empires on the ground of their former residence, or family relationship, or as a reward for services rendered to France.

XIII

INSURANCE

In Germany the government and the courts consider insurance purchased by Germans in English companies as valid until terminated

by mutual consent of the parties. Because it would be impossible to continue the payment of assessments or periodical premiums to English companies, as it is impossible for such companies to meet their foreign obligations under their policies, the "Reichstag" decided to suspend the making of all such payments to the enemy until the return of normal conditions. A large part of the damage which war would normally cause to German holders of foreign policies is avoided through the establishment in Germany several years ago of a Bureau of Supervision of private insurance companies which is charged with the duty of protecting German policy owners against foreign companies operating in Germany. As a consequence of that legislation, twenty-two English companies and two French companies had deposited before the war more than three billion marks as security for their German engagements. Seven companies closed up their business and withdrew from the country. Others made arrangements with reputable German companies to take over their obligations and continue the insurance. In France, by the decree of September 27, 1914, the privilege of doing business in that country was withdrawn from the German and Austro-Hungarian insurance companies who were writing workmen's compensation and life insurance policies in France, and they were erased from the list. The managers of the local office were deprived of their authority and superseded by receivers nominated by the Minister of Labor. The receivers of these insurance companies are required to attend to the carrying out of existing contracts and to the orderly continuance of existing affairs. The provisions of the decree are, however, not quite clear, for it makes no provisions for the liquidation, which will eventually be necessary, nor for any accounting or restitution after the close of the war.

In England this subject is controlled by the Proclamation October 8, 1914, which notifies British subjects:

> (6) "Not to make or enter into any new marine, life, fire or other policy or contract of insurance (including re-insurance) with or for the benefit of an enemy; nor to accept, or give effect to any insurance of, any risk arising under any policy or contract of insurance (including re-insurance) made or entered into with or for the benefit of an enemy before the outbreak of war; and in particular as regards treaties or contracts of re-insurance current at the outbreak of war to which an enemy is a party or in which an enemy is interested not to cede to the enemy or to accept from the enemy under any such treaty or contract any risk arising under any policy or contract of insurance (including re-insurance) made or entered into

after the outbreak of war, or any share in any such risk."

In some cases, English judges have decided that English insurance companies are relieved rrom all obligations to pay to their German policy holders the present value of the cancelled insurance policies, whereas other judges have decided that the insurance contracts were only suspended during the life of the Royal Proclamation.

A little later I will have something to say about a case which occurred in Buenos Aires, where the local office of an English company received instructions to comply with the British Proclamation.

XIV

CONFERENCE OF THE ALLIES ON QUESTIONS OF PRIVATE LAW

A conference, which has been called to meet in Paris, is given the task of harmonizing the laws and interests of the conferring nations on the following subjects of importance to the commerce of the world.

1. Prohibition of trading with the enemy.
2. Performance of existing contracts.
3. Collection of debts in hostile territory.
4. Sequestration of property of the enemy.
5. Questions concerning patents and trade-marks.
6. Prohibition of import and export.
7. The organization of commercial competition after the war, including tariff combinations, the control of naturalization, etc.

Independently of the progress of this interparliamentary conference, the delegates of all the countries of the entente will meet in Paris in December to consider the fundamental principles of an agreement concerning questions of maritime trade.

The interests of the allies are, for the greater portion of the subject matter of the conference, inconsistent; so that it will be difficult, if not, in fact, impossible, to arrive at any general agreement. In any case, such an arrangement would only be of temporary character, for in such questions the principal neutral markets, particularly those of the new world, will have to be consulted. It is impossible that a temporary arrangement made to meet the purposes of the war would be just to the permanent interests of neutral countries.

XV

NATIONALITY AND NATURALIZATION

I will not linger to consider the deep and material moral and legal conflict which was created by the war and which led to a revision of the entire legal fabrics of France, Great Britain and Italy. I have treated these subjects thoroughly with citations of many authorities in the third volume of my work, "La Nationalite", which is now on the way from Europe for distribution here. You will there find the remarks and proposals which I have made as a result of the events which have occurred in our Republic during the war; the mobilization of soldiers at the command of consuls; their assembly in the country; their medical examination; and, more important than all, the moral and industrial pressure which has been exercised by the diplomats, the consuls, the chambers of trade, and other foreign institutions in order to force the European fathers to permit their sons of Argentinian birth to serve them in the European war.

XVI

SPECULATION AND MONOPOLY

I come now to the consideration of other circumstances of a legal character which have occurred, particularly in the year 1916, and which have decidedly harmed the commerce and the internal economy of the Argentine nation. I can summarize these circumstances by stating that in our country organized monopoly and mercantile speculation has been aimed at an enhancement of price of all kinds of export goods which has led to a large shrinkage of consumption, and to a decided increase in the cost of living. These misdeeds have been covered with the radiance of patriotism and their justification has been based upon the alleged desires of European governments, which, as I can prove from the reading of their own laws, have never authorized such a course of conduct nor would ever have dared to do so.

What is the aim of this speculation? As a lecturer, speaking authoritatively, I must limit myself to official documents in the consideration of questions of this kind, so I will refrain from making any guesses as to the origin of the mercantile transactions which I condemn. I will seek their motive in official documents, and I find in this connection; first, an advertisement of the British Consulate, which appeared in the papers of Buenos Aires in May, 1916, and which reads as follows:

> "The Consul-General of His British Majesty in Buenos Aires wishes to bring to the attention of the

trade that since the black-list was published by its government, it has learned that firms whose names appear in this list have received permission from certain persons to use their names in order to cover up their mercantile transactions. This conduct is to be deprecated and, aside from the danger which those persons run of having their names added to the black-list, they are acting against their own interests. The black-list is directed exclusively against firms which are hostile to the allied nations, and its purpose, which we hope will be successful, is to divert the trade which those firms are now enjoying to firms of allied and neutral nations. The latter, in view of the fact that their rivals of hostile nationality cannot conduct any commerce with firms of allied nationality, will be acting, therefore, in their own interest if they refrain from lending their names to conceal the commercial transactions of firms now on the black-list, or which may be added to it."[1]

Speculation for a monopoly is intended in the Argentine Republic to suppress mercantile competition and to put the entire subject under the control of British firms and those of their allies.

Since this official, but not very discreet declaration has been published in Buenos Aires, we must consider as established, that the British government protects this monopolistic enterprise. The scope of the British trade, particularly on the ocean, is so large that it is beyond question that its allies will enjoy only a very small portion of the advantage to be derived from such a monopoly in comparison to that derived by Great Britain herself.

XVII

METHODS OF EXERCISING MONOPOLY

In order to carry out these officially acknowledged intentions, means are used which may be classified under the following headings: The passage of special regulations for the trade of neutrals operating under a neutral flag; examination of correspondence abstracted from the post-office and from neutral ships on the high seas for that purpose; censorship of the use of the telegraph; the

[1]This declaration of the British Consul is affirmed by the speech of the British Minister, Mr. Reginald Tower, of August 9, 1916, before the British Chamber of Commerce of Buenos Aires. See, also, a press telegram under date of London, August 11, 1916, quoting to the same effect Mr. Worthington Evans, of the foreign office. Sir Edward Grey declared recently, in answer to a complaint by the Argentine government of the black-list, that it has for its object "so far as possible to hinder the commercial and financial activity of individuals of enemy origin and to favor the transfer of their trade to British firms" (Note by the German Chamber of Commerce at Buenos Aires.)

monopoly of freight carrying; the discharge of commercial employees; and the "black-list". These actions, which are harmoniously interlocking, form such a broad basis of monopoly that all neutral states are damaged by them and protest against them. But even England's allies, who are obliged by the force of circumstances to comply with them, suffer equally with neutrals. In Buenos Aires, for example, English houses buy grain and food stuffs for Italy without permitting any of the large Italian firms to participate in any way in the profits of that business; and the same result is experienced by the other allies of England.

XVIII

REGULATION OF TRADE

The restrictions which the British government has imposed upon the trade of neutrals were promulgated in the form of communications to governments, or to the public, through Chambers of Commerce, concerning the manner of shipment and the procedure to be followed by neutral ships in order that they should not be annoyed by English cruisers.

As a result, neutral nations today are obliged to observe unfavorable British regulations of shipping, which are appropriate to its commercial and military interests.

XIX

THE MAILS

Our second heading is concerned with the restriction of free intercourse by mail.

Great Britain was naturally interested in examining postal matter destined for the north of Europe and for the countries bordering Germany, such as Sweden, Norway, Holland and Denmark, because this postal matter could be easily forwarded to hostile territory. It is certain that Germany did receive in this manner, under cover of postal packages, money, rubber, copper and other articles necessary to her in the war. The suppression of this course of conduct was well within the rights of a belligerent nation in so far as it pertained to contraband of war. The same statement applies to official letters. But between this power of control and the seizure of letters used only as a means of intercourse between private persons, there is a fundamental difference. Goods were always considered as subject to confiscation. Letters were always and everywhere immune.

Great Britain not only stops letters from the United States, which has given rise to complaints which have not yet been satisfied, but it stops neutral ships on the high sea, removes their mail bags, not only those which are destined for Germany, Austro-Hungary and Turkey, but the entire mail, including that destined for countries outside of the war zone. According to telegrams which were published in Buenos Aires, an English cruiser seized postal matter carried by a neutral steamer off the Chilean Coast, and which was in transit from Buenos Aires to the United States. This violation of the postal service answered no military purpose, for common sense tells us that a letter which takes three months to go from Buenos Aires across the Pacific to Germany, could have no military significance by the time it arrived there, even if it did speak of the war. Letters which are sent from Germany to Buenos Aires have just as little miliary significance and yet they, too, are seized, although there are no kind of hostilities under way in the Argentine Republic against the allies, nor are the Central Powers favored in any such a way here as could have any influence whatever upon their military operations. Such a seizure of the mails can only have a commercial aim, in the first place, that of learning what enemies in the neutral countries are in correspondence with European or American houses, in order to put them on the black-list; and, in the second place, a more weighty matter, because it concerns speculation and monopoly as a means of meeting competition, they wish to know in England the prices and the conditions of pending business in order to either avoid them or to supplant them with others more convenient to the individuals interested in the monopoly.

XX

SUPERVISION OF THE TELEGRAPH

The third means of serving this monopoly is the supervision of the telegraph. The improvidence of some of the countries and unavoidable lack of money in others is accountable for the fact that telegraphic correspondence by cable for many years has been almost entirely in the hands of Great Britain. In the Argentine Republic, as you know, a serious mistake was committed by giving a monopoly of the telegraph to the Western Line, and for this reason our entire correspondence with the external world by wire during the war must be conducted over the English cable, which is operated from London.

During my term of service as Minister of Foreign Affairs, in the year 1907, the German Ambassador was very much interested in the laying of a German cable from Europe to the Brazilian Coast in order thereby to introduce an element of competition in our cable service. That was a very worthy plan, for it would have resulted

in greater expedition of transmission and in a lowering of the tariffs, but the main difficulty was the lack of a point of support in the ocean which could serve the cable as a relay station.

The use of the Island of Fernando de Noronha was already covered by English concessions. Investigations were made which disclosed that it was impossible to establish a telegraph station on any of the other oceanic islets, and the undertaking was thus baffled by the British cable monopoly.

This monopoly controlled our telegraphic connection with other countries, as well as those of all other countries between themselves, to such an extent, that we were unable to send a cablegram from the City of Buenos Aires without subjecting ourselves to the censorship of England. Several months ago I sent a telegram to the publishers, Larose & Tenin, in Paris, in which I sked them to hasten the printing of the third volume of my work "La Nationalite". The telegram was written in French with the customary abbreviations. The British censor at the telegraph bureau of this city returned the message and demanded that I word it in a form satisfactory to him, but which was quite different from my own composition. The word "Nationalite" had aroused the censor's suspicion. Of course, I was obliged to accept the form dictated by him, which cost me added expense.

This shows how far these attacks upon our national supremacy go; because in our Republic, according to articles 1, 2, 7 and 8, and others of the General Telegraph Law of 1875, no lines can be operated which are not under the inspection and supervision of the Argentine government; yet, in spite of that, so far as I know, the Argentine authorities are entirely deprived of this fundamental and reasonable right over the cable companies, and we are consequently entirely deprived of that freedom of intercourse in our private affairs to which we are entitled, and the security of our States is threatened.

This English censor should be forthwith removed by the order and intervention of the Inspector General of Telegraphs of the Argentine Republic, under sanction of the Minister of the Interior.

XXI

FREIGHTS

Freight charges form another aid to the monopoly in question. In this field monopoly is still greater than in that of the telegraph, for Great Britain controls the most powerful fleet of freighters which now uses the ocean. After the dispersion and partial destruction of the German trade fleet, which had been actively competing with the English on every sea, there remain only two great trade fleets, that of Great Britain, which occupies the first rank, and

that of the United States. But the merchant fleet of the United States has no particularly international character. It serves the local trade along the coast, both of the United States and of its neighbors in the Carribean Sea. In its field the merchant fleet of the United States controls an astonishingly large tonnage; so large that a greater tonnage goes through St. Mary's Canal alone, which joins Lake Superior with the lower lakes, than through the harbor of Liverpool.

The oceans are today at the mercy of the British marine. By virtue of this monopoly it is able to dictate freight rates to the world. Before the outbreak of war, we were shipping wool, hides and grain under a freight rate of from twelve to fifteen shillings per ton. Since the war we have paid as high as one hundred and eighty-five shillings per ton, and it is safe to say that on the average such freights have reached one hundred and fifty shillings. This enormous increase is in no respect caused solely through the natural operation of supply and demand or through any lack of ships, although nearly two million tons of tonnage of all nations has been destroyed; nor is it yet caused by the necessity which the allies experienced of withdrawing from trade a large number of vessels to be used as transports for troops and war material in the different parts of the world. These are simply circumstances which in a very natural manner might have justified an increase of freight rates, to let us say, fifty or seventy shillings per ton; but why have freight rates increased one hundred and ten shillings beyond that limit? Because the British government intentionally and cunningly determined to lay tribute upon the world for the payment of the expenses of its war, and with this end in view commanded that the owners of every chartered ship should pay fifty per cent of their freight receipts to the English treasury.

The direct consequence of this imposition to the Argentine Republic is that the English companies regulate freights according to their own free will and not according to the natural law of supply and demand. The British government actually supports this increase of rates, because it commandeers fifty per cent of the receipts, and the higher the freight rates are, the greater the contribution from that source to its sinews of war. Every impost of such a character will, in the last analysis, react upon the one who levies it, and Great Britain is already experiencing at home the misery and the protests of its people against the increased cost of living which are natural consequences of its ship monopoly. The British government for this very reason has already endeavored and is still trying to enforce lower prices upon the great producing countries through the centralization of all purchases for the allies in one hand.

The Argentine Republic, which on the average is twenty days distant from Europe by freight ship, has much more difficulty in securing tonnage than the United States which is only seven days distant from the European ports. Moreover, the enormous extent and the tremendous influence of the great national prosperity of the United States tends to draw free shipping to its ports. The Argentine Republic in this respect can be more easily subjected to the evils of monopoly and speculation. To state it simply, the increase of freight rates has produced an enormous fall in the value of Argentinian products.

XXII

THE DISCHARGE OF COMMERCIAL EMPLOYEES

Among the resources of monopoly and speculation which I am now discussing, I already mentioned the discharge of those commercial employees who are of the nationality of hostile lands. The managers of firms and companies owned by the allies have been forced to discharge such employees. To do them justice, I must acknowledge that some of the managers of some of the firms obeyed the orders unwillingly; primarily, because it concerned individuals who had been for many years connected with the business; secondly, because they lost thereby the benefit of services which they would have preferred to retain as valuable to their business and to its prosperity; and thirdly, because every man, whatever his sympathies in this war, entertains regard for his fellowman, and would naturally be deeply moved to pity by the misery threatened to so many families through such undeserved discharge. In Buenos Aires alone there are several thousand families doomed to poverty by such loss of employment, and this in itself is an offense against the prosperity and the public peace of the Republic.

XXIII

THE BLACK-LIST

Finally comes the black-list. I do not know the origin of this appellation. I do not know whether it came from Europe or was invented by the Argentinian newspapers, for the English law does not use the term "black-list", but speaks of the "Statutory Lists" which are contained in their "statutes", as the laws of England are called.

In 1914 and 1915 Great Britain had not yet thought of a black-list. It was exercising its commercial hostility to Germany

very energetically through the use of every known resource of its ocean police, and concerning which particulars are disclosed in my discourse concerning the seizure of the steamer PRESIDENT MITRE, to which I refer for further particulars. In the year 1916, the demands of the desperate war situation, the great pressure which was being exercised upon British finances by the increasing cost of the war, particularly since England was also acting as banker to its allies too, forced the British government to the publication of its "Statutory List". What do these lists signify? They are in effect a command that British subjects shall not have any dealings with supporters of the countries hostile to Great Britain within its territory. What are the means which they adopt to carry out this command and what is its extent? Shall the interdiction be limited to British territory or shall such dealings be forbidden in neutral lands as well? These are questions which I will now proceed to consider and to which an exposition of the English laws will afford a complete answer.

XXIV

THE BLACK-LIST IN SOUTH AMERICA

We might study these regulations in Brazil where numerous trading firms have been forced to suspend their business and to liquidate and where, for that reason, the passage of a law has been advocated similar to that proposed in our Chamber of Deputies by Doctor Avellaneda[1].

We might study them in Chile, whose active representative in London, so well endowed both with intellect and with money, has succeeded in securing the lowering of freight rates and other favors. We might study them in Uruguay, where the eloquent Deputy, Luis Alberto de Herrera, has denounced in such a comprehensive yet prudent manner the cases of serious violation of Uruguaian Sovereignty such as, for example, the closing of its refrigerating plant, whereby two thousand workmen were deprived of their bread; and we might tell of the displeasure visited upon this eloquent advocate when it became necessary for him to conclude a transaction in exchange with a German. But it would lead us too far to discuss all these facts here, while similar facts are happening in Argentina every day and in much greater volume because this is the greatest and most important produce market of Europe; yes,

[1]Dispatches from Rio of August 7, 1916, advises us that the proposed passage of such a law by the Chamber of Deputies has been abandoned by the proposer in consequence of the protests made by interests friendly to the allies. (Note by the German Chamber of Commerce at Buenos Aires.)

because Argentina, together with the United States, has to provide for the nourishment and clothing of a large part of the world[1].

XXV

OPERATION OF THE BLACK-LIST IN ARGENTINA

After a study of the official documents of the Embassy and Consulate, of the semi-official documents of the Boards of Trade, for they are officially inspired; of the news printed in the newspapers, and of some of the numerous contracts which have been made in this city for grain, meat, and other products of the country, I can draw the following drastic picture of the oppression which our country has been obliged to suffer, which is in fact an attack upon our constitutional guaranties and a violation of several of our laws, and which has resulted in a ruinous decrease of the market prices of our products. I read from my manuscript—

1st. Merchants and brokers were notified that if they dealt with firms on the black-list or had any business relations with them, they would not be permitted to deal with the allied houses. Cases are known in which the individuals to whom this demand was addressed were obliged to sign statements promising to have no transactions of any character with the firms on the black-list. I have in my possession copies of several documents, originals of which can be found in the files of the Grain Exchange, and which completely prove the existence of this boycott.

2nd. An attache of one of the Embassies, being asked by a trader whether he might purchase goods from one of the firms on the black-list upon which he had made advances under a contract therefor made before the publication of the English decree, replied in the negative, and added that it was necessary to make the farmers and merchants of the Republic feel the error which they had committed in dealing with houses on the black-list, stating that the Argentinian producers should have seen two or three months beforehand that the English government would put those firms on a black-list.

3rd. There is in circulation a private and local black-list, on which appear the names of all the local brokers who have not submitted to the British conditions.

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[1]In "La Prensa", of Buenos Aires under date of August 6, 1916, appears the following dispatch from Lima, the capitol of Peru: "On account of the commercial persecution which some of the belligerent powers in the European war are seeking to exercise and which have provoked so much protest, there was submitted to the local courts a case in which the restrictions imposed upon trade were alleged to be a foreign invasion of the interior affairs of the country. The Supreme Court decided in substance that the black-list could not be plead as an excuse for cancelling a contract of sale made in Peru." (Note by the German Chamber of Commerce at Buenos Aires.)

4th. Brokers who are subjects of the Central Powers, or who have any dealings with subjects of the Central Powers, can sell nothing, and they are not even permitted to enter the offices of British or allied firms.

5th. A firm in Rosario demanded of a merchant that he should discharge his German employees, and threatened that none of the allied houses would have any dealings with him if he did not obey. The brokers of Rosario called a meeting to determine the attitude which they should adopt in view of this demand, but before the meeting was held, the firm withdrew its demand.

6th. Numerous contracts for future delivery of grain were cancelled, becausd the employees of the purchasers feared that the grain then in storage might be connected in some way with some of the firms on the black-list.

7th. The employees of certain railroads, which nominally, at least, are subject to the conditions of their Argentine charters and to the law of the land, but which in fact are operated by British agents, gave information to the commissioners who were appointed for the purpose of preventing trade with firms on the black-list, and these commissioners advised the allied houses which stores of grain they should not buy, because originally the property of houses on the black-list or of subjects of the Central Powers.

8th. Dealers, working for the monopoly, purchased grain by wire, subject to specifically stated conditions of quantity, quality and price. Such purchasers afterwards presented to the sellers contracts containing a further condition prohibiting delivery of grain of hostile origin, and when the purchasers protested against this additional condition and remarked that the contract had been made without them, they received the answer that such a condition must be understood as a part of the custom of the place.

9th. In some cases merchants drew exchange in favor of third persons upon allied firms. The payees endorsed the exchange to houses which appeared on the black-list. The allied houses refused to honor these drafts because the owners presenting them were on the black-list. Rather than have their paper go to protest, the endorsees paid the drafts.

10th. Employees and representatives of those allied firms conducting business in the interior of the country, have been strictly admonished to boycott every person employed by firms on the black-list, and for that reason a great number of country merchants, growers, producers of wool, etc., have experienced great difficulty in marketing their products.

11th. The allied firms have notified their brokers that they must not offer them any grain which has been harvested by a grower of Argentine citizenship, but who is the descendant of a

subject of the Central Powers; and the merchants and brokers thereby affected are unable to protect their rights either in court or through the trade associations, for, even if the decision was favorable to them, they would earn the hostility of the allied firms, which, for the present, monopolize the market. They must either submit or cease doing business.

12th. Merchants in Rosario who have business with German houses complain that they have been called in by the officers of an English bank and told that the bank would cease its relations with them, if they had anything further to do with such houses. This bank owes its right to do business as an artificial person to the Argentine law, but in this respect it only obeys the foreign mandate.

13th. The prominent lawyers, Aldo, Campos & del Valle, filed a formal brief on April 28, 1916, with the Minister of Foreign Relations in defense of the "Compania Argentina Hidraulico-Agricola", which is on the black-list. This company is domiciled in Argentina, is incorporated under the Argentinian law, and employs four hundred workmen who are engaged in the construction of hydraulic works in progress of construction in the development of the province of Entre Rios in the vicinity of Ibicuy. The first issue of capital of the company was two million pesos in shares of stock which were issued in this country and of which a large part in a value of $800,000.00 is owned by Mr. Rafael Escrina, a resident of Buenos Aires. This company was seriously hindered in the completion of important Argentine public works, because after their name appeared in the black-list, they were no longer able to procure the necessary machinery, cement, or other building material. An English firm at Buenos Aires refused to deliver to it extra parts for the machines which they owned and which had been purchased from that house, excusing itself by referring to the command of the British Consul.

14th. Shipping agents of the lines operating between the United States and Buenos Aires chartered steamers of neutral countries, Norway, Sweden, Denmark, Holland, Greece and others. They were visited in Buenos Aires and threatened with a boycott if they should continue to use such neutral ships for transporting cargoes in which merchants who appeared upon the black-list in Argentina or in the United States had any interest. Because these threats had no effect in Buenos Aires at first, pressure was brought to bear upon the large shipping agencies in New York which chartered ships there for trade with the whole world, and they were categorically told that if they should have any dealings with any one of the thousands of American firms which appeared upon the black-list or with any of the Argentine houses on the black-list, they would not be permitted in the future to charter any English

steamers and that every British coaling station in the world would be instructed to refuse to sell coal to neutral steamers so chartered. Fearing that their whole business would be crippled, the American agents submitted under protest, and in the expectation that the government of their country would give them relief; but in the meantime Argentina is bearing the brunt of this prohibition, for the scope of its trade and the freedom of its communication with North American ports is seriously limited, its freight rates have been increased and the export and import of goods, upon which it is so dependent, have been lessened.

15th. Numerous firms of Buenos Aires, which are owned here or abroad, could not get goods which were necessary for our local consumption and which they had purchased in the United States. The shipping agencies of the United States hesitated to accept such cargo because representatives of England had threatened them that British cruisers would seize any such goods presumably belonging to hostile owners. Difficulties were made even for the Argentine Republic itself over the delivery of coal purchased by it for its own navy.

16th. All these things seriously hinder, disturb and cripple trade between the United States and Argentina at a time in which the former is our principal source of supply. Moreover, the cost of living in Argentina is thereby increased and the price of local products decreased, because purchasers prefer to buy them in the American market. For example, wool is at the present time threatened by a very serious crisis, because of the pressure which has hindered and partly suppressed transportation between Buenos Aires and New York.

This list of the measures which Great Britain has adopted to insure its monopoly could easily be further extended, for no one person can possibly review all of the conditions of that character which have developed in our trade.

XXVI

RESULTS

What are then the results of the exercise of monopoly and speculation on the value of our products? The first result is, that a pound of Argentinian meat which was bringing in the markets gradually increasing prices before the publication of the black-list, has suffered a material loss of value, so great a loss, that the breeder of beeves for the market must sell his animals of first quality for about $200.00[1] less than they would appear to be worth

[1]NOTE.—The Argentinian dollar is the equivalent of 44 cents gold.

by the quotations of the markets of the world. Wheat, which was sold before the war for $13.00 and even $14.00 is now sacrificed for between $3.50 and $7.30, which prices do not even cover the cost of production and interest on the capital employed, so that the producer is actually losing money. This price reduction extends also to corn which is now being sold between $3.50 and $5.00. This has caused the actual ruin of the larger part of the farmers, because these people sowed their crops with the expectation of selling their corn for at least $12.00 and they are now only able to get less than half price, although they are obliged to pay the debts in full which they incurred in the expectation of a normal disposition of their crops. This means that after the sale of their crops they will be hopelessly in debt and will have no means of procuring seed or labor for the planting of a new one.

The Argentine Republic would swim in prosperity, it would be the richest land in the world, if it were not for the idle wealth tied up in sinking funds and banks and which is withdrawn from circulation and which is of as little practical use as the gold and coal of the mountains of the moon. Argentina would have had to sell all of its harvest and products for at least three times their actual prices in order to enjoy such prosperity, such easy credit, and such a liberal supply of money as are now being enjoyed by other neutral countries of much inferior economical power.

Our wheat is really worth in the markets of the world $15.00. Our fatted steers are really worth $400.00 (animals of inferior quality are now selling for more than that in North America); in a word, Argentina loses, in consequence of the British measures of oppression, four hundred and fifty to six hundred million pesos yearly which represents the loss in value of its products which have been so arduously produced by its own citizens.

XXVII

THE BASIS OF THESE RESULTS

What are the causes of this condition? Are there any legal reasons for its justification? If there were legal grounds for it, we would be obliged to hold our peace, for there is no protest against the majesty of the law, but this has all occurred in Buenos Aires through the co-operation of diplomats, Consuls, Chambers of Commerce and followers of the various countries on the assumed authority of European laws which do not exist and pretended official mandates of the allies to refrain from dealing with the subjects of hostile lands, when in fact no such official mandates have ever been issued by any government.

XXVIII

THE LEGISLATION OF ITALY

We will begin with Italy for that country plays a particularly prominent role in Argentina. We have in our country a million and a half Italians, or descendants of Italians. Italy has not issued any such trade prohibition. It has not tried to prevent Italians from conducting commerce with citizens of the countries which are at war with it, or with those of its allies, outside of its own territory. Italy has enacted a series of well considered emergency laws which show that the doctrine of those far-sighted statesmen is still in force, who carried out the economical renaissance of that kingdom, the fourth wonder of the financial world, that "fourth Italy" which has proudly sprung up out of the poverty to which it had been degraded by feudalism and domestic dissension. Italy has organized its domestic trade and protected it efficiently. It has taken steps to protect its credits and to keep its economical machinery in operation.

Its relation to Germany is of a very peculiar nature. A French author, Mr. M. Valery, Professor of Law in the University of Montpellier, says in the *Journal de Droit International,* that the general relationship between Germany and Italy is that of a "malevolent neutrality". In Italy they do not like the Germans, because they are allies of Austro-Hungary; and in Berlin they do not like the Italians because they believe that their attitude at the time of the declaration of war was not correct. Two great factors have co-operated to the advantage of Italy, on the one hand the enormous volume of German capital which has been employed in the economical life of Italy since 1870, and on the other hand, the hundreds of millions of savings which have been sent to Italy every year by emigrated Italians, and of which the greater portion came from Argentina and the United States. The Italian and German governments have arrived at an understanding which I will read, because it provides a modus vivendi between both countries which is neither war nor peace, but which saves the principles of private rights and amounts to a complete and lasting guaranty. The treaty which was signed four days before Italy declared war on Austro-Hungary reads as follows:

> "Article 1. Protection of person and property is guaranteed to Germans in Italy and to Italians in Germany in accordance with the statutes and the principles of law.
>
> "Article 2. They are permitted to continue to live anywhere in those respective countries, except in such places and neighborhoods as may be designated by the

proper authorities, but under observation and under such restrictions and police regulations as may from time to time be promulgated in the interests of the security of the state, of the public peace, or of the personal security of the individuals affected. They are, on the other hand, permitted to leave either country within such time and in such manner as may be prescribed by the proper authorities as appropriate to the circumstances. Officers in active service and on leave of absence are excluded from this right, as are also all individuals who have been convicted of offenses against the common law or who are fugitives from justice. Persons leaving the country are entitled to take with them all their movable property, excepting such articles as are prohibited by law to be exported.

"Article 3. In the exercise of their private rights, in so far as their enforcement in the courts are concerned, Germans in Italy and Italians in Germany shall not be subjected to any restrictions beyond those imposed upon all neutrals resident in the country. Private property shall in no way be exposed to confiscation or liquidation, except in cases provided for by existing laws; and, further, owners may not be required to sell their real estate. Patents and other rights for the protection of industrial property which belong to Germans in Italy or to Italians in Germany, shall not be annulled. No one shall be hindered in the exercise of such rights; and no transfer thereof, without the consent of the owner, shall be permitted, except in case of the application of regulations for the exclusive interest of the state. Contracts which have been concluded between Germans and Italians either before or after the beginning of the war, as well as all existing obligations of every kind between Germans and Italians, shall not be annulled or suspended except for causes recognized by general law. Damages which may be awarded for the breach of contract, according to the legal rules now in force, may not exceed those actually suffered. The advantages which the subjects of either country enjoy in the other through the civil laws controlling workmen's compensation, shall remain in force. The enjoyment of the aforesaid rights shall not be disturbed in any way.

"Article 4. The provisions of the sixth Hague Convention concerning the treatment of hostile mer-

cantile shipping at the beginning of hostilities shall be applicable to German merchant ships in Italian ports and to Italian ships in German ports and to their cargoes. Such ships cannot be forced to leave port except under a guarantee of safe conduct, recognized by hostile sea powers, to a port of their own country, or from that of one country to another, or from one Italian or German port to another. The provisions of Chapter Three of the eleventh Hague Convention, which embody certain restrictions upon the jurisdiction of prize courts, shall be applicable to the officers and crews of such merchant vessels as well as of those which may be seized during the course of the war.

"Article 5. This treaty shall be operative throughout any territory which the military authorities of either state may occupy as well as throughout their colonies and possessions." (Signed at Berlin, May 25, 1915.)

My honored friend, the Italian Minister, Conde Cobianchi, to whom I applied for the latest developments on this subject, has been kind enough to send me a copy of a telegram which I received on the 20th of this month (July, 1916), and according to which the Italian government for the first time has passed any regulation of trade between Italy and hostile foreigners. It is a decree of the regent of the kingdom, July 18, 1916, to take effect on the 20th of that month. The telegram is addressed to the Italian Embassy and reads as follows:—

"Every transfer of property or rights in real estate within the kingdom and its colonies by natural or artificial subjects of hostile states or allies of hostile states during the continuance of the war, is annulled. The granting of mercantile credits is likewise forbidden. The same decree empowers the royal government on the principle of reciprocity or reprisal to provide that the subjects of hostile states or of their allies shall be excluded from the benefits of legal procedure in civil, trade, or criminal courts throughout the kingdom and its colonies."

For the first time Italy has laid down a rule which might operate to exclude it from trade with Germany, but it does so under the categorical explanation that these rules shall have no authority outside of the kingdom and its colonies. This limitation is dictated by a healthy human understanding. Neither the king of Italy nor the Parliament in Rome can make any laws enforce-

able in foreign lands, unless by and with the approval of the local authorities, *leges non valent extra territorium.* This is the doctrine of the introduction to our own civil code, which is entitled to high admiration from the viewpoint of private law, because it clearly settles questions of public order which in other countries are confused by a labyrinth of theories and often by wholly inconsistent and contradictory opinions.

It follows that Italy could not forbid its subjects residing in neutral countries, nor has it forbidden them, from contracting and dealing with subjects of Germany or Austro-Hungary[1].

XXIX

PROHIBITIVE REGULATION OF TRADE IN FRANCE

What was the attitude of France? It first issued a decree on September 27, 1914. A careful study of French emergency legislation discloses that in the beginning that country did not entertain any sharply defined policy on that subject. It seemed to have no specific aim. It proceeded in an experimental matter to meet emergencies as they arose. The decree in question was intended to forbid commercial relations between the French and their enemies exclusively in France. The decree is particularly interesting to us because it led to most arbitrary construction in Buenos Aires. It reads as follows:—

> "Article 1. In view of the existing state of war and in the interest of the national defense, all trade with subjects of the German Empire and of Austro-Hungary, or with individuals residing in those countries, is prohibited. Subjects of those countries are forbidden to trade in French territory or in that of French protectorates, either directly or through the mediation of third persons.
>
> "Article 2.—Every transaction or contract which may have been concluded in French territory or in a French protectorate by anybody, or in any other place by Frenchmen or the subjects of French protectorates with subjects of the German Empire or Austro-Hungary or with persons domiciled in those countries, will be considered as absolutely void and as though never concluded, as contrary to the public welfare. Such nullity shall date from the 4th of August, 1914, in the case

[1]According to press dispatches of August 5, the Italian government has issued a new decree which prohibits trade between its subjects and those of foreign lands. A declaration of war by Italy against Germany then followed, which changed the conditions stated by the lecturer. (Note by German Chamber of Commerce.)

of the German Empire, and from the 13th of August, 1914, in the case of Austro-Hungary, and shall remain in effect during the continuance of hostilities and until some date to be fixed thereafter.

"Article 3. During that period every demand for money or other benefit of any character arising from any transaction or contract in any place in French territory or that of its protectorates before the dates named in the preceding article, or in any other territory against Frenchmen or citizens of French protectorates in favor of subjects of the German Empire or Austro-Hungary or individuals domiciled therein, is prohibited, as contrary to the public welfare, and shall be held to be null and void.

"In cases where the execution of such transactions or contracts shall not have been commenced at the date of this decree by delivery of goods or payments of money, their nullity shall be declared by the President of the Civil Court on petition of the interested parties. Only Frenchmen, and those under French protection, their allies, or citizens of neutral lands are entitled to petition for such nullification.

"Article 4. The provisions of the two preceding articles of this decree shall also be applicable to cases where the transaction or contract shall have been negotiated through a third party.

"Article 5. A special decree will be made later concerning patents for inventions and trade-marks in which subjects of the enemy countries are interested, as well as concerning such corporations engaged in the business of writing life and employers' liability insurance as have their home offices in either of said hostile countries.

"Article 6. The provision of this decree will be submitted to the Chamber of Deputies for its approval."

Please notice that the decree has to do exclusively with the performance of contracts and of other valid obligations *within* the territory of France, its colonies and its protectorates, and has nothing to do with either the conclusion or the performance of such contracts in neutral countries. Furthermore, the nullification of such transactions must be submitted to the French courts; which, according to the provisions of Article Three of the decree, will decide whether any question of the violation of the public welfare of France is involved or not, that is whether the contract is valid or void. It

would be absurd to assume that the French courts would enter decrees of nullity which would be opposed to the public welfare either of Argentina or any other neutral country. These rules of interpretation are essential and conclusive.

The decree also embodies the same limitations found in the Italian law, because it forbids transactions with subjects of hostile countries only *within* French territory.

But Article Three of the decree has been very strangely construed in Buenos Aires. Let us read it again in order to clearly understand its text. It declares with absolute and incontestible certainty that contracts made in any part of the world (*en tous lieux*) shall be null and void if they are made to be performed in France and are between subjects or dependants of France and those of hostile countries.

Such a provision is legally warranted in times of peace as well as war. They are dealing with the performance of contracts within French territory which are detrimental to local public welfare; the government of France has a sovereign right to prevent or limit the performance of contracts which are in fact detrimental to its national interest. In the same manner, for example, our civil code forbids the execution in Argentina of a contract made in Montevideo for smuggling on our coast, and it forbids the execution of any kind of a contract in this country which, in fact, violates our laws or which is detrimental to our public welfare. The French decree is aimed solely at the performance of such contracts within French territory, as plainly appears from the language used. Such contracts, whether they are made in France, Vienna, Berlin, New York or Buenos Aires, cannot be performed in France, but they may be performed in any neutral place of contract. There is absolutely nothing more in the whole decree[1].

XXX

ATTITUDE OF THE FRENCH CHAMBER OF COMMERCE IN BUENOS AIRES

The French Chamber of Commerce in Buenos Aires has nevertheless construed this decree as prohibitive of and vitiating all contracts made in the Argentine Republic between Frenchmen and subjects of such hostile countries, even though intended to be performed in our country or in some other neutral state, basing its

[1]The following telegram was received from Paris on August 6, 1916. "The 'Official Journal' has just published a black-list of business houses which are to be considered as of hostile character and which are engaged in neutral countries as middlemen for enemy firms. There is no doubt that this decree relates only to transactions which are to be consummated in France." (Note by German Chamber of Commerce at Buenos Aires.)

construction upon the wholly erroneous interpretation of the words *en toux lieux*. That Chamber of Commerce has extended to the decree a scope which never rested in the intention of the French government and which does not correspond to its language, for the decree does not forbid the doing of business with Germans and Austro-Hungarians in neutral lands. It declares only that such contracts made in any country of the world to be *performed in France* or in its territories shall not be carried out.

Such correct construction casts upon the local French Chamber of Commerce the duty of recognizing that the French residents of Buenos Aires are not in any way prohibited from trading with Germans or Austro-Hungarians, nor are they obliged to suffer any of the pecuniary damage which would result from the termination of such trade relations.

It may be that such transactions might seem to them contrary to their patriotic moral sentiments, but that is a question of conscience which cannot be asserted publicly in derogation of the Argentine law. There is no legal prohibition and there could be none, because the French laws have enacted none and have no right to enact any applicable in foreign sovereign states.

In spite of that, the local French Chamber of Commerce published the following announcement in the *Courier de La Plata* on November 21, 1915.:

> "Last July the French Chamber of Commerce wrote to the Minister of Commerce in Paris, through M. Jullemier, the Minister of France in Buenos Aires, a letter of inquiry containing several questions concerning the application of the law which prohibits all commerce with subjects of hostile nations in foreign countries, especially in the Argentine Republic, and requested enlightenment on that subject. The Chamber of Commerce has not received any reply from the department, but from later information emanating from the orders, received from the French government and which have been communicated to it by the French Consul, concerning the scope and the interpretation of the French decree, it believes it to be its duty to communicate to French merchants its exact text. (The full text is given.) It is thereby formally prohibited to trade with the subject of a hostile country in any place. We hope that the French colony, which has given so many evidences of abnegation and sacrifice, will submit patriotically to the duties imposed upon it by the superior interests of national defense."

XXXI

THE ONLY FRENCH LAW ON THIS SUBJECT

The French government could not have answered the communication addressed to it otherwise than negatively, and it is highly improbable that it issued any orders to its Consul to try to enforce French laws in Buenos Aires. No, it is certain that his attitude is erroneous.

Moreover, it is astonishing that the French Chamber of Commerce and the French Consul in Buenos Aires could have interpreted the decree of September 27, 1914, and the statute of April 4, 1915, as applicable to trade between Frenchmen and the subjects of hostile countries in foreign countries or "especially in the Argentine Republic", for that decree and that statute contain no word subject to that interpretation. It is inexplicable that any one should speak of the necessities of the national defense of France as applicable to the life of the Argentine Republic. It seems as though the Consul and the French merchants unwittingly have forgotten the rights and the dignity of the Argentine Republic.

The decree above quoted was laid before the French National Assembly which amended it on April 4, 1915, in such a way as to fully confirm my construction. It reads as follows:—

> "Article 1. Whoever violates the prohibitions which have been enacted or which may be enacted in the future and, either directly or through a middleman, carries out any mercantile transaction or other agreement, or attempts so to do, either with the subject of a hostile power, or with any individual residing in hostile territory, or with any agent of such a person, shall be punishable by imprisonment of from one to five years and by a fine of from five hundred to twenty thousand francs, or either. All persons will be considered as criminal confederates who shall have participated as attorneys, brokers, commissioners, insurers, transporters, wharfers, or otherwise, having knowledge of the origin and destination of the goods or other articles of value utilized in the execution of such forbidden transaction, or who is connected in any way for the account of the contracting parties with the forbidden transaction. In case of conviction, the courts may order confiscation of the goods or other articles of value or of their proceeds, or of the horses, wagons, ships or other vehicles used for their transportation.

"Article 2. The same penalties shall be imposed upon any one who shall remove from one place to another or who shall conceal any property belonging to the subjects of a hostile power, which has been seized under the authority of any public decree; or who shall have instigated any such removal or secretion.

"Article 3. Conviction of the author or confederate of any crime covered by Article One, shall entail as a legal consequence the loss of his personal rights and privileges, as specified in Article Forty-Two of the criminal code. The forfeiture of all or part of those civil rights may be included by the court as a part of the punishment of the offenses specified in Article Two.

"Article 4. Article 463 of the criminal code shall be applicable to violations of this law.

"Article 5. This law shall have full validity in Algiers, the colonies and French protectorates."

What article of this law is it, and it is the only one on the subject, the language of which forbids Frenchmen living in neutral lands from participating in the harmless and customary commerce of those countries?

The foregoing text of this law shows beyond question that the French provisions partake of a national character and are to be applied by its local courts within its own territory without any consideration of the place in which such contracts were entered into, provided they were intended to be performed on French territory. But these provisions are no way applicable to contracts which are concluded in neutral countries for performance therein; and in order that there may not remain the slightest doubt of the accuracy of this construction, I will call attention again to the fifth Article, which I have just read, which fixes the geographical limitations of the force of this law, by saying that it shall be applicable to France, Algiers, the colonies and the protectorates of France. If the interpretation were correct which the French Consul in Buenos Aires and the Chamber of Commerce have pervertedly and wilfully adopted, and if the law really was intended to include neutral lands, the statute in question would have read, "This law shall be applicable in France, its colonies and protectorates, *and in neutral countries.*"

But such a monstrous error could never have been committed by the eminent French jurists who were then legislating, not for foreign countries, but only for their own country. Frenchmen domiciled in the Argentine Republic are not subject to the French laws, but to our laws, for they have voluntarily adopted our sov-

ereignty; and they would commit a misdemeanor against the public peace and dignity of our nation if they were to invoke the provisions of, or proclaim their obedience to foreign laws. We come to the conclusion, then, that some of the leading individuals of the French colony in Buenos Aires have committed a fundamental error, which I would gladly interpret as unintentional; and that they have shown a lack of consideration for the Argentine Republic, for its laws, and for the guaranties extended by its constitution equally to all strangers who come to live upon our soil.[1]

XXXII

INTERPRETATIONS OF THE FRENCH JURISTS

All these questions have been discussed in France as well as here. In the *Journal de Droit International,* 1915, page 1048, the editor considers in details seven cases which were based upon the enforcement of the decree of September, 1914, and upon the law of 1915, and which were decided in harmony. The law was held to be a prohibition against the conduct of trade of Frenchmen with persons residing within the territory of Germany or Austro-Hungary. The sixth case specifically involved the construction of the words *en tous lieux,* and reaches the conclusion that the prohibition is only appliable to such transactions as are intended to be carried out *within French territory.*

The decree, the law and its interpretation by French jurists all prove that the French are not forbidden to live in a foreign country and to deal at will with subjects of that country who live there, unless their dealings are to be consummated in French territory. In a word, the French law has respected the authority, the neutrality, the freedom of trade and the sovereignty of those states which are not involved in the war. Should those Frenchmen who live in Argentina go further than their own government, beyond the letter as well as beyond the spirit of the law of their fatherland, and forget all the respect which we entertain for them and which they should have for us?

[1]The President of the French Chamber of Commerce, Mr. Lang-Willar, manager in Buenos. Aires of the house of Dreyfus & Co., honored me with a cordial visit in order to communicate to me the text of a legal opinion which he wished to publish as tending to disprove my statement. The letter began "In view of our friendly relations and convinced of the sincerity of your assertion that as a lecturer you do not speak with any prejudices in favor of the allies, I limit myself to a reply to the legal conclusions which you have reached by quoting to you, etc." I answered Mr. Lang-Willar in the following words: "I was very pleased with the two spontaneous visits which you made and which you will recall, and I thank you for them as an indication of the regard which they signify for me, as well as because they gave me an opportunity to assure you of the nonpartisanship of my teaching activity in the University. Your courtesy is responsive to the words which I used in my lecture as excusing the conduct and intentions of the French Chamber of Commerce, of which you were the president, and of which mention was made in my lecture. As far as the opinions of the lawyer are concerned, which you were so kind as to send me, but which he prefers to have considered anonymous, I greatly regret that I am unable to give them any consideration. According to the ethical rule of the University, it requires professors of law to assume public responsibility for their doctrines." (Note by the lecturer.)

XXXIII

STATUTORY TRADE PROHIBITION IN GREAT BRITAIN

Let us now examine the statutes of Great Britain on this subject, legislation which has been forced upon its allies, as may well be understood, and which has been utilized in Buenos Aires, so as to restrain the freedom of our trade; so as to rob the Argentinian farmers, sons of Germans, Austrians, Turks, Bulgarians, etc., of their just rewards and to prevent or disturb the orderly sale of the fruits of their labor; and so as to strike a heavy blow at the prosperity of Patagonia where the greatest part of the trade in, and production of wool is in the hands of German houses, which have there established great ranches and expended many millions of capital, such as the firms Lahusen, Meyer, Spangenberg, now Kurt, Frese & Co., and others.

Has the British government authorized such a conspiracy against the general prosperity, the trade, the dignity, the constitution and the laws of the Argentine Republic? To be upright, I must say that it has not. I base my opinion upon the following grounds. The first Proclamation which prohibited British subjects from trading with Germans (the "Trading with Enemies" act) was passed August 5, 1914. I translate literally the introduction which contains the purport of this proclamation, quoting from the *Manual of Emergency Legislation, comprising all the acts of Parliament, proclamations, orders, etc., passed and made in consequence of the war.* (1914 to 1916.) Published by authority, 4 Vol. It reads as follows:—

> "Now and hereafter we consider it appropriate with and by authority of the approval of our privy council to issue this, our Imperial Edict, and therefore we command all persons who reside within our possessions, or who are there engaged in trade, or who live there, not to enter into any new contracts or commercial obligations of financial or other character with or to the advantage of any person who resides or is engaged in trade in the Empire aforesaid (Germany)."

XXXIV

OCCURRENCES IN BUENOS AIRES

I promised you before to give an example of the attempts which have been made in this country to enforce the foregoing proclamation against insurance business. Mr. Lahusen, Jr., son of a German, was in Germany when war broke out and was required to serve in the army. A prominent insurance company, which has

a branch in Buenos Aires, and which I have the honor of advising, had made a contract with this young man for life insurance. The home office of the company in England directed the local branch to refuse to accept payment of Lahusen's premium, claiming that the contract was terminated by virtue of the Royal Proclamation. The local manager sought my advice immediately. I explained to him that the text of the Proclamation is clear and plainly says that it has no application to the Argentine Republic or other neutral countries, but is only of force in British possessions. I added that the contract of insurance must be respected because its provisions constitute a legal obligation, and that in case of breach, an action would lie against the company which it would lose, with costs; and I further said, that in such an action I could not represent the company, because that would be the defense of conduct which is contrary to the public policy of Argentina. My answer was transmitted to the Directorate of the home office which decided to follow my advice.

Just about the same time the British steamer, J. R. THOMPSON, arrived in Buenos Aires with a cargo of coal for a German company which had already sold the coal for future delivery to the Argentinian gun factory at Puerto Borghi and to other industrial firms of Buenos Aires. An agent of the British Embassy ordered the Captain of the steamer not to deliver his cargo, because it belonged to Germany. The interested parties honored me with the duty of investigating the case, and I discovered the following peculiar facts. In October, after the war had been in progress more than two months, a British firm in Cardiff telegraphed to the German firm in question in Buenos Aires and offered to sell it this coal, and in so doing it was fully within its right, because such a contract would not be executed in the British Empire but in Buenos Aires. The German company accepted the offer, and after the coal arrived in this port the British order appeared. I dictated a complaint against the unlawful interference ascribed to the British Embassy. Prominence was given in the newspapers to the incident and to the contemplated lawsuit. This publicity was sufficient to induce the Captain to deliver the coal to the German company.

What is now the moral of these two cases? That always when the law and dignity of a country is defended with a just and firm hand its abuse will instantly cease.

Let us not forget, gentlemen, that whatever may be our sympathies with one or the other of the countries at war, we are, before all, Argentinians and we should comply and enforce compliance with our law.

XXXV

THE NEW BRITISH ORDERS

On the 12th of August, 1914, the British government issued another order on the same subject, which provided as follows:—

> "Article 1. In order to define the commercial operations which are permitted with foreign firms, the important point is to consider where the foreign merchant has his domicile and is engaged in commerce, and not his nationality.
>
> "Article 2. Consequently, there is, as a general rule, no objection to the transaction of business by British firms with German or Austrian firms established in neutral territory.
>
> "Article 3. If a firm, whose principal office is in a hostile territory, maintains a branch in neutral or in British territory, commerce with such branch is permitted, always provided that it be exercised in good faith and saving any special prohibitions of the law, and always provided that no business is done with the main office of the firm."

This confirms the statement I made that the British government in its prize tribunals and in political cases upholds the principles of nationality; although in matters of private right it continues to observe our doctrine of domicile, which is a safeguard of human liberty.

The second article of the order is conclusive and merits special attention in the face of the abuses which have occurred in our country through misinterpretation of this emergency legislation. The proclamation of August 22, 1914, authorizes in effect every British house in our country to deal with subjects of the central governments and with their allies.

What basis is there, then, for the prohibition which is so persistent in Buenos Aires? Only that which is given to it arbitrarily by those interested in speculation and monopoly, those concealed directors who offend our national dignity, whose official and social inertia is an insult to our industry.

It is asserted that the British Embassy in Buenos Aires exercises control of, or interference with, the private business of trade and shipping, and threatens to take measures against those who trade in Argentine territory with nationals of the boycotted countries. This must be an exaggeration circulated in the heat of the passions now in vogue. It is not reasonable to ascribe such a course of conduct to the plenipotentiary of a foreign country; and for my part,

I am inclined to think that these accusations are not accurate, because such conduct would be an abuse of the diplomatic function and an attack upon our constitution and laws. If such acts of oppression have been committed, it must have been by British agents who hold no official responsibility and who act only in their individual capacity.

XXXVI

WHAT DO WE MEAN BY AN ENEMY OF GREAT BRITAIN?

Finally, on September 9, 1915, the English government, proceeding with equal clearness, defines an enemy of Great Britain in the following language:—

> "Article 3. The word 'enemy' herein used is intended to signify any person whatsoever or body of persons, whatever may be their nationality, who are domiciled or do business in the hostile country; but does not include persons of hostile nationality who are not domiciled or who do not do business in a hostile country. Those artificial persons only may be considered as enemies who are created in a hostile country."

This proclamation was confirmed by another of November 27, 1914, in which new provisions were made as follows:—

> "Considering that it is convenient to establish new regulations to prevent the payment of money to persons or bodies of persons domiciled within or who have business within any country with which His Majesty is within an actual state of war, etc."

The Court of Appeals in London in a case decided January 19, 1915, asked the following question: "What is understood by the term 'Alien Enemy'?" The court decided that the criterion was not that of nationality but that of he domicile. The *Times*, of London, January 2, 1915, says that according to this judicial definition it is possible that an Englishman might be considered as a hostile foreigner, while the subject of a hostile state would be treated as a subject of the British Crown. A foreigner registered according to the provisions of the "Aliens Act" of 1914, and residing in England by consent of the king, is entitled to standing in the English courts, but unless he has authority to reside in England, the subject of a hostile country cannot appear in an English court as a party plaintiff. On the other hand, there is no serious reason for depriving him of the duty to pay his debts in England because of his character as an enemy.

For that reason, the Appellate Court decided that execution may issue against a foreigner; that, if he can be brought into court, it follows that he may voluntarily appear there and defend himself against a pending complaint. The court says, "to question this right, would be the equivalent of denying him justice, a result which is contrary to the principles which control the courts of the Kingdom in their administration of the law."

This decision was made in the case of the *Continental Tire & Rubber Co.,* and was decided by a unanimous bench. The decision was followed by the House of Lords in a case involving the rights of an artificial person, "The One Man Co." In spite of the fact that these decisions were unanimously rendered, Lord Buckley and Lord Lindley decided in another case that under no circumstances could a natural or artificial person, belonging to hostile countries, appear before British courts. Fortunately, the opinion of these dissenting judges does not control the administration of justice in England during the war.

According to the British law and to the decision cited, foreigners, be they Germans or other allies, who are domiciled or who live transiently in a neutral country, are not enemies of England, and their right to trade is just as free as before the war. The permission granted by the Proclamation of King George V on August 22, is in no respect necessary to the exercise of such rights in the Argentine Republic, and I have quoted the matter only to satisfy you by a superfluity of proof of the injustice of the monopoly in our country which speculators have conducted to our impoverishment.

If a German or Austro-Hungarian concludes a transaction in Great Britain which is to be carried out in Germany or in Austro-Hungary, it would be contrary, not only to the emergency laws and to the Proclamation, but to common sense; but, if he is dealing in a neutral country under the protection of its laws, the King of England declares that his conduct is entirely permissible, because not under British jurisdiction.

They, who in Buenos Aires seek to defend themselves on the alleged existence of an English law which in fact does not exist in the form asserted, are abusing our hospitality, and when they organize and seek to profit by monopoly and artificial speculation in our country on such an excuse, they are treading the Argentine constitution under foot.

XXXVII

THE BRITISH BLACK-LIST

We have now come to the most difficult point of consideration: I have already said that England adopted the black-list, as an

extreme measure, for the first time in 1916. The proclamation of King George V was only made a few months ago, being dated February 29, 1916. It is still little known in Buenos Aires and its text is not yet available to the public, although it has been kindly furnished to me by the Minister of Foreign Affairs who received it from our Embassy in London. It forbids trade with certain persons of hostile nationality and uses the word "enemy" in the same sense given to it by the former Proclamation of the King and by judicial decisions in England. It is necessary to keep that definition in mind in construing the prohibitions of the Proclamation.

The proclamation repeats the greater portion of the former orders and declares that they are applicable to individuals who are domiciled in the United Kingdom, who trade there, or who temporarily reside there. Paragraph (b) is plainly a limitation upon the operation of British enterprises in neutral lands; for example, the Southern Railway, or the Company of the Port of Buenos Aires, although the decree does not actually refer to mercantile transactions or to contracts made in neutral lands such as the Argentine Republic, but only to those concluded by Boards of Directors in the United Kingdom for current supplies for such foreignly located enterprises. The directorate of the Southern Railway in London could, accordingly, make no contract with German firms or with firms of German allies for the delivery of articles for its railroad in the Argentine Republic, but the local management of the railroad in the Argentine Republic may make contracts to provide the railroad with its necessary supplies, either with Germans or with their allies, either here or in the United States, or in any other neutral country, for supplies not obtainable in England. Such contracts would be perfectly legal anyway, because British Proclamations have no authority outside of British territory.

XXXVIII

MEASURES TO PROTECT ARGENTINE TRADE

After this very convincing exposition of the English laws, we may confidently assert that an unbearable misuse is being made in the Argentine Republic of the provisions of laws which do not contain the language claimed and which are being misinterpreted by selfish interest or by indifference. Consequently, the Grain Exchange, the Association of Produce Merchants, the Argentine "Museo Social", the Industrial Union of Argentine, and other institutions of the capital and of the city of Rosario, have taken measures for the pro-

[1]The portions of the Order in Council in question quoted by the lecturer are omitted because not essential to the thread of his arguments, because superseded by subsequent orders, and on account of the nature of the reply just made by the British government to the American protest. (Trans.)

tection of the freedom of their commerce which I will not read here, because they have been thoroughly advertised and I may assume them to be familiar to you.

XXXIX

ATTITUDE OF THE NATIONAL AUTHORITIES

The Argentine authorities have not been indifferent. We know that our government has already lodged a protest in London. So much, our Minister, Dr. Muratore, has told me, but he was not able to give me any particulars because it is contrary to diplomatic usage to discuss pending affairs. But I do not need any official disclosures to be able to assure you that the success of our complaint against the misconstruction placed upon the black-list will entirely depend upon the conclusion reached concerning a similar complaint made by the United States a few days ago to the authorities in London. England will not fail to extend to us the same consideration as to the United States, although the latter is a country of much greater political and commercial influence. It will also be obliged to extend the same rule to the neutral countries of the North Sea. In this respect our interests are all common. In addition to the very correct procedure adopted by our government, I must also call your attention to the fact that our deputy, Dr. Marco Aurelio Avellaneda, has introduced in the Chamber of Deputies a bill which calls attention in a very intelligent and patriotic manner to this unlawful course of conduct, a practical boycott, and which fixes penalties for its continuance. I regret that lack of time prevents me from considering in detail the manner in which Dr. Avallaneda has expressed the national sentiment in this regard. I will show later that court proceedings might be based on the use made of the black-list, under existing provisions of our civil and criminal codes, and I do not doubt that as soon as such a case is actually brought in the courts, our judges will take the exalted position which is required by their duty and patriotism.

XL

THE AMERICAN PROTEST

But as the whole question necessarily depends upon the success of the protest made by the United States, I wish to report that, according to a telegram published July 21, 1916, in the newspapers,

the English government is said to have made the following reply to the government at Washington:

> "1. The black-list does not imply any attack on trade. It is only made to prevent the use of British products and British capital to the advantage of Germany in foreign lands.
>
> "2. In general, the black-list does not affect in any way existing treaties.
>
> "3. Great Britain will entertain petitions for removal from the black-list in so far as British trade is concerned, whenever the petitioners show that they are not supporting Germany in any way."

In what way, might I ask, could a farmer in South Dakota or in Buenos Aires, an American or an Argentinian of German descent, who wishes to sell his wheat, lend any political support to Germany? There could be no more indefinite interpretation of the black-list, if this be authentic, none more insulting to the sovereignty of the United States. England means to say that the United States and the Argentine Republic should be content to have their citizens of German or Austro-Hungarian descent knock at the door of England for permission before they are permitted to sell their goods in the United States or in the Argentine Republic.

Moreover, who is going to define such an indefinite expression as the closing sentence, "who give any support to Germany"? What sort of a support are they talking about?

The United States must certainly reject this insinuation and in a determined way protect its sovereignty and the merchants within its territory. The United States must view, as we do, the application of the black-list to transactions within their territory as an attack upon their national sovereignty.

XLI

LEGAL DEFENSES—ARGENTINE LEGISLATION

Let us see what the Argentine laws say, what means they contribute to the preservation of our national honor, to the protection of our trade, and to the maintenance of the personal rights of the inhabitants of our country. The procedure of the French and British Consuls in Buenos Aires was very exceptional; for, in addition to the Declaration signed by them, which I have already read to you, I might exhibit to you a copy of an original document which is signed by one of our prominent mercantile houses in Buenos Aires, but whose identity I will not disclose. It is dated March 28, 1916, and explains to us why French houses of Buenos Aires

hesitate to deal with German houses and why they feel forced to do so; for even they regret such necessity. The document says in part:

> "As to the order with which you have today honored us, we regret to be obliged to notify you that we have received strong representations from the French Consulate which forbid us during the period of the war, to enter into trade relations with German firms. For this reason, because your respected house falls within that category and because we do not feel that we dare oppose this demand, we must regretfully decline your valued order until conditions have changed."

XLII

RESPONSIBILITY OF THE CONSUL

These foreign Consuls have not shown proper respect for the Argentine law. Our Federal Court decided (Volume 3, second series, page 484)

> "Foreign consuls have no legal control of any character over the inhabitans of a foreign land, not even those of their own nationality, unless it be extended to them by the express terms of a treaty."

It is possible that the consuls in question have been lax in performing the duties imposed upon them by their own government, but at any rate, they have committed acts which fall within the prohibition of our law and for which penalties are provided. Because they are acting in their official capacity, we are not permitted to punish them, for our Supreme Court has decided that foreign Consuls may only be brought before Argentine courts in questions arising out of their private affairs, and that when acting in their official capacity they are only responsible to their own governments. That court held that foreign consuls may only be called to account for their official transactions in the courts of their own country. (Volume 3, second series, pp. 387, 484. Volume 13, *idem.* page 176.)

The political administrative control which the consuls are exercising for the purpose of leading their dependents astray, has no justification under our constitution and law, and in its effect amounts to a misdemeanor; but because our courts are not open to their punishment, the French and British governments ought to interfere, if they wish their representatives to maintain a correct attitude, and ought to prevent them from committing offenses in our country under the mantle of European laws. The Argentine Republic ought immediately to return their credentials to these Consuls, who are

no longer *persona grata,* and to demand proper reparation from their respective governments.

As far as the propaganda and the proceedings of the French and English Chambers of Commerce are concerned, I would be glad to be able to justify the prominent individuals who control those institutions in their course of conduct if it were possible. They are blinded by their patriotism, and when we enter the domain of patriotism we must be respectful; we must be prudent; for it is not easy to decide where excusable sentiment ceases and intentional wrongdoing begins. We must ask these individuals to moderate their conduct and to cease their violations of our common law. We must remind them that *they* are subject to be called to judgment before our courts according to our existing laws, both civil and criminal.

They should all pay heed to the decision of our Supreme Court (Volume 14, second series, page 102) that,

> "The freedom of contract has its bounds. Contracts contrary to those prohibited by the law are always null and void, whatever their form."

But I have contracts of that kind here before me. They are current locally and more publicity should be given to them. I will not give the names of the business houses implicated, although I am dealing with written documents which have been transmitted to their customers by the most important firms dealing here in cereals, meat and other agricultural products. They are the ones who are speculating, seeking monopoly, and forcing prices down. These firms have forced their customers to recognize alleged local customs which, according to the decisions of the Federal Court, are null and void, as I will demonstrate. The language in question is substantially as follows:—

> "Type S.—No orders for goods will be accepted except from houses whose owners belong to neutral countries or to those of countries allied with England, nor will credit be extended in favor of any other firms than those indicated.
>
> "Type B.—The undersigned agree that in the execution of the foregoing sale the seller shall not deliver any goods obtained directly or indirectly from commercial houses or individuals whose names appear upon the English black-list, or obtained from firms or subjects of countries hostile to England and her allies, or which are actually located in the warehouses or depots of such firms. Arrangements for delivery and payment are subject to the same conditions."

Such clauses as these are only a sample of the numerous provisions which appear in contracts of this kind. We have to do with a mercantile system of boycott organized in this way by private firms, by Chambers of Commerce and by the foreign Consuls, which is contrary to our law and which, according to our judicial decisions, is null and void. These are contracts against which recourse to the courts is open; and I am convinced that our courts will hold such contracts void under the principles of law already enunciated. If such dealings are not inspired by Consuls, but are solely between private persons, they constitute a misdemeanor against the common law; against which provision is made by our criminal code, which may be punished, and upon which independent civil complaints for damages might be based. Nothing is easier than to demonstrate that there is a boycott here against certain firms, a boycott conducted by prominent houses, by Consuls, and by Chambers of Commerce, and I have given you its language. It is not only proven by the contracts themselves, but by the public pressure which is brought to bear upon our stock markets, our produce markets, our refrigerating industry and our agriculture, by the wholesalers who belong to the pool, aided by their consular authorities and their Chambers of Commerce.

The law reads,

> (Article 14 of the Constitution)—"All inhabitants of the nation enjoy the following rights, according to the laws which regulate their exercise, * * * to work, to practice every permissible industry, to follow trade by sea and land."
>
> "Article 20. Foreigners shall enjoy in the national territories the same civil rights as citizens themselves, * * * and may engage in industry, trade and other callings."
>
> "Article 28. "The principles, guaranties and rights which are recognized in the foregoing Articles cannot be restricted by laws which regulate their exercise."

If the Argentine law cannot change these constitutional provisions, is it possible that they may be amended by merchants, Consuls and foreign Chambers of Commerce who are within our borders? Article 31 of the constitution says:

> "This Constitution, the laws of the nation which may be enacted by Congress subject to its provisions, and treaties with foreign powers constitute the supreme law of the land; and the authorities of every province are obliged to observe it, disregarding any contrary

provision which may be found in the constitutions or laws of the province."

If even the provinces of our union are not permitted to modify these constitutional guaranties, may it be done by foreign Consuls and Chambers of Commerce? Moreover, Article 5 of the law of September 14, 1863, provides as follows:—

> "Whoever executes any decrees, bulls, briefs or orders of the Papal See, or whoever commands their execution, without the special authority of the government, etc."

The punishment for violation of this law is banishment of four to eight years. This law makes no mention of foreign statutes, because they are already covered by Article 14 of the civil code, which provides that a foreign statute shall have no application unless permitted by the local law; so that an offense of this character would be one committed under aggravating circumstances. Article 7 of the same law is explicit and quite applicable to offenses committed by domestic or foreign subjects. It reads as follows:—

> "Article 7. Whoever, by hostile acts, without the approval of the government, exposes citizens to any burdens or reprisals of person or property, shall be sentenced to give public satisfaction and shall be punished by hard labor of from one to three years."

The criminal code contains provisions against extortion and conduct of that character in our commercial life, covered by the following prohibition:

> "Article 168-(A). Whoever, through force or intimidation, forces another to deliver, surrender, subscribe or destroy, to his damage or to that of a third person, any document upon which any legal right may be based, shall be punished by imprisonment from three to six years.
>
> "(B). The same punshment shall be visited upon any one who forces another through threats or the simulation of public authority, to send, deposit or otherwise use articles, money or any probative document for the benefit of the accused or of third person."

I have demonstrated the existence of a boycott. Its existence is universally known; and innumerable written documents and other evidences prove it. Our law penalizes a boycott in the following language:

> "Article 25. Whoever, through insults, threats or force seeks to induce any person to participate in a

strike or boycott, shall be punished by imprisonment of from one to three years, provided the offense committed does not include some other crime for which a greater punishment has already been imposed."

The civil code contains the following admonition to Consuls and Chambers of Commerce who exhibit disobedience to the Argentinian law or who incite others to obey foreign emergency legislation:

> "Article 14. Foreign laws have no application when such application would be contrary to the law of the land."

Finally, judicial decisions have fixed the principle, that neither use, custom nor practice creates rights, unless the law of the land specifically recognizes such an effect.

(Judgments of the Supreme Court, Volume 4, second series, page 487.)

In Volume 6, *idem.* second series, page 204, there is another decision which enunciates the following principle:

> "Foreigners as well as other inhabitants of the country are bound to recognize the customs and laws of the Republic and to regulate their conduct accordingly."

The state, and private individuals as well, have at hand, therefore, legal remedies in superfluity to defend themselves against that monopoly and trade speculation which has raised its head in our country, and which, under the protection of that freedom from punishment, which its originators have heretofore enjoyed, is depriving our citizens of the fruits of their labor to the value of many millions.

XLIII

THE DUTIES OF IMPARTIALITY IN THE UNITED STATES AND THE ARGENTINE REPUBLIC

The duties of impartiality and the limitations which the individual should place upon the free expression of his opinions of the warring nations are particularly weighty in those countries which, like the United States of North America and the Argentine Republic, have been largely built up by immigration. Because these countries have accepted this foreign immigration, they have thereby assumed a solemn obligation to civilization to protect the moral and the material prosperity of such immigrants, to assure to them that justice and happiness which they seek here, and which is so happily expressed by the American law, which declares their right to voluntarily surrender their European citizenship.

In the United States, where immigration is so enormous, where, out of a population of perhaps one hundred and ten million, thirty million are either German and Austrian born or descended and where some twenty-five million more came from other parts of Europe or are descendants of such immigrants, the duties of impartiality have been particularly violated by the passions engendered by the war. Prominent statesmen, like Roosevelt, Wilson, Taft, Bryan and Hughes have raised their voices in vain against the tendency of born and naturalized Americans to forget their character as citizens of the union and to express their opinions of the war as though they were still dependents of the warring nations.

This policy of hostility between one man and another within the territory of the union is an insult to American nationality, because it ignores the humane character of its provisions, disturbs the public peace and creates public friction; it is not consistent with the guaranties of the Constitution; and, finally, because the passions so engendered lead even to crime. Exhibitions of such hostility have been exemplified by overt acts in the United States, for example, the blowing up of bridges, the burning of factories and the concealment of explosives in ship cargoes.

If such attacks and crimes had been committed within the territory of the United States only by subjects of the warring nations they would not be surprising, nor worthy of special mention, because they would only be violations of local law to be expiated by the punishment provided by that law.

But these demonstrations have been accompanied by the aggravating circumstances that their originators were themselves citizens of the United States, and such conduct might, therefore, well lead an observer to question the actual impartiality of that nation towards those involved in the war.

XLIV

DUTIES OF HOSPITALITY IN THE ARGENTINE

The Argentine Republic is more fortunate in this respect. We have made the mistake of failing to naturalize those strangers, to whom we should have extended our citizenship, as a tribute to their culture and to their long residence in our country. But we have not bound them to the recognition of Argentinian nationality in that manner; we have left them perfectly free to continue their adherence to their foreign nationality. The number of such foreigners is so great in the larger cities, like Buenos Aires and Rosario, that the war has caused very unusual demonstrations, both individually and collectively, and to which many citizens who

are naturalized Argentinians have given voluntary support according to their sentiment of friendship or hostility.

But these war influences within the borders of our country have fortunately recognized the bounds of justice, culture and freedom. The Constitution has been observed and we have never forgotten that we are Argentinian first, and not Europeans, and that whatever sentiments of favor or disfavor may be entertained by us toward the warring nations, we recognize our obligation to control our passions and to observe the proprieties of that hospitality which we owe to all foreigners who live in our country.

The Argentinian conception differs in this respect, as I have repeatedly shown, from that of the United States. For while the Constitution of the latter only mentions foreigners once, in speaking of the jurisdiction of the Supreme Court, and does not define their rights or guaranties, the Argentine Constitution, a humane and broad act of legislation, seems to have been composed for the purpose of offering an asylum to the unhappy of every race without national prejudice, because in its introduction it extends an invitation to all the inhabitants of the world to reside within our boundaries and there to seek prosperity and happiness.

If, therefore, foreigners under these conditions come to the Argentine Republic, it is a duty and honor for Argentinians to respect their rights, their interests and their freedom in every way and to demand such respect from them. These duties are particularly imposed upon all of us who occupy official positions, or who have ever done so, from the president of the nation to the professor of the university; for any partiality toward foreigners can easily grow into a hostility, which might infringe upon the wonderful system of social equilibrium provided for by our Constitution.

I have exemplified the obligation of these duties in this lecture by examining the legal position of both parties with strict justice. I have not only fulfilled my duty of fidelity to the Constitution imposed upon me by my character as an Argentinian citizen, but I have also fulfilled the higher duty of an impartisan teacher who should investigate the legal principles, and the human weaknesses which such principles are intended to protect, with that care and honesty which alone should characterize all scientific endeavor.

The war will come to an end; and then all the nations of the world, warring or neutral, will approve the moral plane upon which the people of our country have stood and the exercise of their sympathies and antipathies without permitting themselves either excesses or crimes. We might say with pride that our country, in spite of its sixty years of turbulent existence, has become an earthly paradise for those who have been divided by the European war, for here they find freedom to remain true to the interests

of their own people, without violating either the rights or the prosperity of their opponents.

This attitude is so universal in our country and reflects such an honorable light upon our adherence to law, that the excesses, and the injustice of the pursuit of monopoly, which I have been considering, may be considered only as mistakes which might be committed through the weakness of humanity in any place, in peace as well as war; but such excesses must end, not only to preserve the honor of our country, but so that respect for Argentina in the civilized world, and particularly in warring Europe, may increase; so that they may recall thankfully the prosperity which their children have found here, as well as the financial support which has been given to their populace by their subjects in this country; and, finally, in order to ameliorate the devastations of that catastrophe which has befallen their families upon the field of battle. The high social and financial circles of the Old World will further recognize that the Argentine Republic is the only rich and great country which has suffered incalculable losses through the war, while other countries have prospered inordinately thereby, thanks to the exercise of statesmanship which I will not now consider in detail; but that in spite of that, we have punctually paid the interest upon our foreign debt, and have thereby helped to strengthen the industrial life of the European countries, have helped to lessen their misery, and to assuage their grief.

These facts, in my opinion, constitute our finest tribute, our finest contribution to the celebration of the first century of our independence; and I turn to you, as jurists and scholars, and invite you to faithfully protect that justice and impartiality which so redound to the praise of the Argentine Republic in the emergency which this world is now experiencing.

I thank you for your attention.[1]

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[1](Translator's Note.)—The "Handels-Zeitung" or "Revista Financiera y Commercial" of Buenos Aires, Oct. 7, 1916, speaking editorially, reports that the Argentinian lower house has just referred Dr. Avellaneda's bill, as amended by the committee on new laws, to a special committee of five deputies with instructions to collect detailed information of damage inflicted by application of the "statutory lists" and report to the next session of the house. The editor says: "This action of the house is to be regretted. In view of the many concrete cases cited by Dr. Avellaneda in Congress and to which attention had been called by Dr. Zeballos several months ago in his lectures which attracted so much attention, and in view of the action taken by the most important of the local commercial houses, there is no doubt that this commercial war has seriously disturbed the internal economy of the Republic. Dr. Irigoyen, who will begin his new term as president within a few days, was elected upon a platform in which he promised to enforce our Constitution. He now has a splendid opportunity to carry out his promise. The foreign consular authorities, in seeking to enforce foreign Proclamations, are attempting to give European laws operation in a sovereign neutral country, although by the very language of those Proclamations they are only applicable within the territories of the countries participating in the war; and they are seriously damaging important agricultural interests in this country as well as those of foreign trade. Their conduct is a ruthless violation of our national Constitution and wholly unjustified by their home governments, which have not undertaken openly or formally to violate our sovereignty or our Constitutional Guaranties. We must patiently await some expression of the attitude which the new administration will take in this important matter. Our national dignity is at stake. Any passive attitude of our administration will lower the standing of our country in the estimation of these foreign governments; and, if interpreted as an indication of national weakness, might in the future be followed by most disastrous consequences."